

**T**he dyalogues  
in Englishe, betwene  
a Doctour of diu-  
nitie, and a Stu-  
dent  
in the lawes of Englande,  
newely corrected and  
imprinted w<sup>th</sup>  
new additi-  
ons.

¶ Cum priuilegio ad im-  
primendum solum.



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**Ch**ereafter foloweth the  
first Dialogue in Englyshe, betwixt  
a doctour of Diuinitie, and a Student in the  
lawes of Englande, of the groundes of the said  
lawes, and of conscience. Newly corrected, and  
ectiounes imprynted with new addicions.

**¶ The Introduction.**



**A** Doctour of Diuinitie  
that was of great ac-  
quaintaunce and fami-  
liaritie w<sup>th</sup> a Student  
in the lawes of En-  
glad, sayd thus vnto  
hi. I haue had great  
desire of long time to  
know wherupon the  
lawe of Englande is  
grounded, but because the most part of the law  
of England is writte in the french tong, ther-  
fore I cannot through mine owne study attend  
to the knowledge therof: for in that tong I am  
nothing expert. And because I haue alwayes  
found thee a faithful frend to me in all my busi-  
ness: Therefore I am desirous to come to thee be-  
fore any other to knowe the mynde what bee  
the verie groundes of the lawe of Englande  
as thou thykest. **Student.** That woulde  
asse a great leasure, and it is also aboue my com-  
pyng to dooe it. Neuertheles, that thou shalt  
not thinke that I woulde wilfulle refuse to  
fulfyl thy desyre, I shall w<sup>th</sup> good wyl dooe

A.ii.

that

## The firste chapter.

that in me is to satisfie thy mynde, but I praye thee that thou wylt first shew me somewhat of other lawes that pertaine most to this matter: and that Doctours treat of, how lawes haue begunne. And then I will gladly shewe thee as me thinketh what be the grounds of the law of England. D. I wyl with good will dooe as thou sayest: wherfore thou shalt vnderstande that Doctours treat of four lawes, the which (as me semeth) pertaine mooste to thys matter. The first is the lawe eternall. The seconde is the lawe of nature of reasonable creatures, the whiche as I haue hearde saie, is called by them that be learned in the law of England, the law of reason. The thirde is the lawe of God. The fourth is the lawe of man. And therfore I wil first treat of the lawe eternall.

¶ Of the lawe Eternall.

The first Chapter.

**L**ike as there is in euery artificer a reason of such thinges as are to be made by his craft, so likewise it behoueth that i euery gouernour there be a reason and a foresighte in the gouernour of suche thinges as shalbe ordered & done by him, to them that he hath the gouernance of. And for asmuch as almighty God is the creator and maker of all creatures, to the whiche he is compared as a workeman to his workes. And is also the gouernour of all dedes & mouynges that be found in any creature. Therfore as the reason of the wisdom of god (inasmuch as creatures be create by him) hath the reason & foresight of all craftes and workes that haue bene

or shalbe: so the reason of the wisdom of God moving all things by wisdom made to a good ende, obteyneth the name and reason of a lawe and that is called the lawe eternall.

And this lawe eternall is called the first lawe, and it is well called the firste, for it was before all other lawes, and all other lawes be deriued of it, wherupon saynt Augustyne sayeth in hys first booke of free arbitrement, that in temporal lawes nothing is righteous ne lawful, but that the people haue deriued to them out of the lawe eternall. Wherfore euery man hath right and title to haue that he hath righteously of the right wise iudgement of the first reason, which is the lawe eternall. S. But how may this lawe eternall be knowne: for as the Apostle writeth in the fift Chapter of his firste Epistle to the Corinthians. Qui sunt dei, nemo scit nisi spiritus dei. That is to saye, no man knoweth what is i god, but y spirit of god. Wherfore it semeth that he openeth his mouth into heauen that attempteth to know it. D. This lawe eternall no man may knowe as it is in it selfe but onely blessed soules that see god face to face. But almyghty God of hys goodnes sheweth of it as much to hys creatures as is necessary for them, for els God shold bind his creatures to a thing impossible: which may in no wise be thought in hym. Therfore it is to vnderstand that thre manner of wayes almyghty God maketh this lawe eternall knowne to hys creatures reasonable.

First by the light of natural reason. Secod, by heauenly reuelacion. Thirde, by the order of a

## The firste chapter.

**p**rince or of any other secondary gouernour that hath power to bynde his subiectes to a lawe. And when the lawe eternall or the wyl of god, is knowne to hys creatures reasonable by the light of natural vnderstandyng, or by the light of naturall reason, then it is called the lawe of reason. And when it is shewed by heauenly reuelacion in suche maner as here after shall appere, the it is called the law of god. And when it is shewed vnto hym by the order of a prynce or of any other secondary gouernour that hath power to set a lawe vpon hys subiectes, then it is called the lawe of man, thoughc originallye it be made of God. For lawes made by man that hath receyued therto power of GOD be made by God. Therefore the sayd three lawes that is to saie: the law of reason, the law of god & the law of man, & whych haue seuerall names after the maner as they be shewed to man, be called in God one lawe eternall.

And this is the lawe of whom it is written, *Proverbiorū octauo*, where it is sayd. *Per me reges regnant & legum conditores iusta discernunt.* That is to saie: by me kinges raigne, and makers of lawes discern the trouth. And this suffiseth for thys tyme of the lawe eternall.

**O**f the lawe of reason: the which by doctours is called the lawe of nature of reasonable creature.

The.ii. Chapter.

*fryste*



The second chapter. Fol. 4.

**F**irst it is to be vnderstande, that the lawe of nature maye be considered in two maners, that is to say: generally & speciallye, when it is considered generally, then it is referred to all creatures, aswel reasonable as vnreasonable, for al vnreasonable creatures liue vnder a certain rule to the geue by nature, necessary for them to the cōseruacion of their being, but of this lawe it is not our entent to treate at this time. The lawe of nature speciallye cōsidered: which is also called the lawe of reason, pertyneth onely to creatures reasonable, that is man whiche is create to the ymage of God.

And thys lawe oughte to bee kepte as well amonge Jewes, and Gentylls, as amonge Christian menne. And thys lawe is alwaye good and righteous, lhyrryng and enclinyng a manne to good, and abhorryng euyl: and as to the ordering of the dedes of man it is preferred before the lawe of God. And it is written in the hart of euery man teachyng him what is to be done & what is to be fled. And because it is written in the heart, therefore it may not be put away, ne it is neuer chaungeable by no diuersitie of place ne tyme. And therfore agaynst this lawe, prescriptiō, statute, nor custome, may not preuaile. And if any be brought in against it, they be no prescripcions, statutes nor customes, but thinges voyde & agaynst iustice. And all other lawes, aswell the lawes of God as to the actes of menne, as other be grounded thereupon.

A.iiii. S, Syth

## The second chapter.

**S.** With the law of reason is writte<sup>n</sup> in the hart of euey man, as thou hast said before, teaching hym what is to be done, and what is to be fled, and the which thou saiest may neuer be put out of the heart: what needed it then to haue any other law brought in, to order the actes & dedes of the people. **D.** Though the law of reason may not be channged, nor wholly put away, neuertheles before the law written it was greatly let and blinded by euil customes & by manye synnes of the people beyde the original sinne, in so much that it myght hardlye be discerned what was ryghteous and what was vnryghteous, & what good and what euill, wherfore it was necessarye for the good order of the people to haue many thinges added to the law of reason, aswel by the churche as by seculer princes accordyng to the maners of the countrey and of the people, where such addicions shoulde be exercised. And this lawe of reason differeth from the law of God in two maners. For the law of God is geue by reuelacion of god, and this law is geuen by a natural lyght of vnderstandyng. And also the lawe of God ordereth a man of it selfe by a nyghe waye to the felicitye that euer shall endure. And the lawe of reason ordereth a man to the felicitye of this lyfe. **S.** But what be tho thinges that the lawe of reason teacheth to be done, & what to be fled: I pray thee shew me. **D.** The law of reason teacheth that good is to be loued, and euyl is to be fled. Also that thou shalt do to another that thou wouldest another should do to thee. Also that we may dooe nothing

## The second chapter. Fo. 5.

nothing against truth. Also þ a man must liue  
 peacefullpe with other. That Justice is to be  
 done to euery manne: & that wrong is not to be  
 done to any man. And also þ a trespasser is wor-  
 thy to be punished & such other, of the whiche  
 folow diuers other secondarpe comaundemen-  
 tes the which be as necessary conclusions deri-  
 ued of the firste, as of that commaundemente  
 that good is to be beloued, it foloweth that a  
 man shal loue his benefactour, for a benefactor  
 in that he is a benefactour, includeth in him a  
 reason of goodnes, for els he oughte not to be  
 called a benefactour, that is to saie, a good doer  
 but an euil doer. And so in that he is a benefa-  
 ctour, he is to be beloued in all tymes, and in al  
 places. And this law also suffereth many thin-  
ges to be done, as that it is lawfull to put away  
force with force. And that it is lawfull for eue-  
 ry man to defend himselfe & his goodes against  
 an vnlawfull power. And thys law renneth  
 with euery mens lawe, and also with the lawe  
 of God, as to the dedes of man, and must be al-  
 wayes kept and obserued, and shall alway de-  
 clare what ought to folowe vpon the generall  
 rules of the lawe of man, and shal restrayne the  
 if they be in any thinge contrarpe vnto it. And  
 here it is to be vnderstand, that after some men  
 the lawe wherby all thynges were in common  
 was neuer of the lawe of reason, but onely in  
 the time of extreme necessitie. For they say that  
the lawe of reason maye not be chaunged, but  
 they say it is euident that the law wherby all  
 thinges should be in common is chaged, wher-  
 fore

*of reason*

## The thirde chapter.

foze they conclude that it was neuer the lawe  
of reason.

### ¶ Of the lawe of God.

#### The.iii. Chapiter.

**T**he lawe of God is a certayn law geuen  
by reuelacion to reasonable creature,  
shewing hi the wil of god, willing that  
creature reasonable to be bound to do a  
thing or not to do it for obteynnyng of the felici-  
tie eternal. And it is said (for the obteynnyng of  
the felicitie eternal) to exclude the lawes shew-  
ed by reuelacion of God for the politicial rule of  
the people, the which be called Iudicials. For  
a lawe is not properly called the lawe of God  
bicause it was shewed by reuelacion of god, but  
also bicause it directeth a mā by the nerest way  
to the felicitie eternall as bene the lawes of the  
olde Testamente that bene called Moralles,  
and the lawe of the Euangelistes: the whyche  
were shewed in muche more excellent maner,  
then the lawe of the olde Testamente was: for  
that was shewed bi the meditacion of an angel.  
But the law of the Euangelistes was shewed  
by the mediacion of our lord Iesu Christ God  
& man, and the lawe of god is alway righteous  
and iust, for it is made and geuen after the wyl  
of god. And therfore al actes and dedes of man  
be called righteous and iust when they be done  
acordyng to the lawe of God & be confirmable  
to

to it. Also sometime a lawe made by man: is called the lawe of god. As when a lawe taketh his principal ground vpon the law of God, and is made for the declaration or conseruacion of the faythe, and to put away heresies, as diuers lawes Canons, and also diuers lawes made by the common people sometime dooe. The which therfore are rather to be called the law of God, then the law of man. Yet neuertheles, all the lawes Cannon be not the lawes of God. For many of them be made onely for the politicall rule and conuersacion of the people, wherupon John Gerson in the treatise of the spiritual life of the soule, the seconde Lesson, & the thirde Corozallie, sayth thus. All the Cannons of bishops nor their decrees be not the law of God. For many of them be made onely for the political conuersacion of the people. And if any mā wil saie: Bee not all the goodes of the churche spiritual: for they belonge to the spiritualtie & leed to the spiritualtye. We aunswere: That in the whole political conuersacion of the people, there bee some specialltye deputed and dedicate to the seruyce of GOD, the which most specialltye (as by an excellencye) are called spiritual menne as religious menne are. And other though they walke in the waye of God, yet neuerthelesse, bicause their office is mooste specially to be occupied about suche thinges as pertain to the common wealth, and to the good order of the people, they be therefore called secular men or lay men. Neuertheles, the goodes of the firste maye no more be called spirituall,  
then



## The thirde chapter.

then the goodes of the other, for they be thynges mere tēporall and keepyng the body as they dooe in the other. And by lyke reason lawes made for the polliticall order of the churche, be called many times spiritual or the lawes of god. Nevertheless, it is but vnproperly. And other be called ciuil or the lawes of man. And in this poynt many be oft times deceiued, and also deceiue other, the whiche iudge tho thinges to be spirituall, the whiche all men knowe be thynges materiall and carnall. These be the wordes of John Gerson in the place alledged before. Furthermoze, beside the law of reason and the lawe of man, it was necessarie to haue the lawe of God for foure reasons. The first because man is ordeyned to the end of eternall felicitie the whiche exceedeth the propozicion and facultie of mannes power. Therfore it was necessarie that besyde the lawe of reason and the lawe of man: he shoulde be directed to his ende by a law made of God. Seconde, forasmuch as for the vncertaintie of mannes iudgement, specially of thinges perticular and seldome failing it happeneth ofte tymes to folow diuers iudgements of dyuers menne, and diuersities of lawes, and therfore to the entent that a manne wythoute anye doubtte maye knowe what he shoulde dooe and what he shoulde not doe. It was necessarie that he shoulde be directed in al his dedes by a law heauenly geuen by God, the which is so apparant that no man may swaue fro it, as is the law of God. Thirde, man may onely make a lawe of such thynges as he maye iudge

## The fourth chapter. Fo. 7.

iudge vpon, and the iudgemēt of man may not be of inwarde thynges, but onely of outwarde thynges, and neuertheles it belongeth to perfection that a man be well ordred in bothe, that is to say, aswell inward as outward. Therfore it was necessarye to haue the lawe of God, the which should order a mā aswell of inward thynges as of outward thynges. The fourth is, because as saynt Augustine sayth in the first boke of free arbitrement, the lawe of man maye not punishe al offences: for if all offences should be punished, the cōmune wealth should be hurt as it is of contractes. For it can not be auoyded, but that as long as contractes be suffred, many offences shall folow thereby, & yet they be suffered for the common wealth. And therfore that no euil should be vnpunished, it was necessary to haue the lawe of God that shoulde leaue no euil vnpunished.

¶ Of the lawe of man.

The. iiii. Chapter.

**T**he lawe of man the whiche sometime is called the lawe positue is deriued by reason as a thing which is necessarily and probable, for to wyng of the lawe of reason, and of the lawe of god. And that is called probable that appeareth to manye, and specially to wyse men, to be true. And therfore in euery lawe positue, well made is somewhat of the lawe of reason, and of the lawe of God, and to discern the lawe of God and the law of Reason fro the lawe positue is very harde. And though it be harde, yet  
it

## The fourth chapter.

it is muche necessarye in euery morall doctrine,  
and in all lawes made for the common wealth.  
And that the law of man be iust and rightwise  
two thinges be necessary, that is to say, wisdome  
and auctoritie, wisdome, that he may iudge af-  
ter reason what is to be done for the communal-  
tie, and what is expedient for a peaceable con-  
uersacion, and necessarye sustentacion of them.  
Auctoritie & he haue auctoritie to make lawes  
For the law is named of Ligare: that is to say,  
to bynde. But the sentence of a wise man doth  
not bynde & cominaltie, if he haue no rule ouer  
them. Also to euery good law be required these  
propties, that is to say: that it be honest, right-  
wise, possible in it selfe, and after the custome of  
the countrey, conuenient for the place & tyme,  
necessarye, profitable, & also manifest that it be  
not capcious by any darke sentence, ne nyxte  
with anye priuate wealthe, but al made for the  
common wealth. And after saint Briget in the  
fourth booke in the C. xix. Chhapter, euerye  
good law is ordeyned to the health of the soul,  
and to the fulfillynge of the lawes of God: and  
to enduce the people to fye euyll despyres and  
to dooe good workes. Also as the Cardinal of  
Cameret writeth: what soeuer is ryghteous in  
the lawe of manne, is righteous in the lawe of  
god: for euery mannes lawe must be consonant  
to the lawe of God. And therefore the lawes  
of princes, the commaundementes of prelates,  
the statutes of comminalties, ne yet the ordi-  
nauce of the churche is not righteous nor ob-  
ligatory but it be consonant to the law of God.

And

## The fourth chapter. Fo.8.

And of suche a lawe of man that is consonant to the lawe of god, it appeareth who hath right to landes and goodes, and who not: for whatsoeuer a manne hath by suche lawes of manne he hath righteously. And whatsoeuer is had agaynst suche lawes, is vnrighteously had.

For lawes of man not contrarie to the lawe of God, nor to the lawe of reason, must be obserued in the lawe of the soule: and he that despyseth them, despyseth God, and resisteth God. And furthermore, as Gracian sayeth, because euil men feare to offend for feare of payn, Therfore it was necessary that diuers paynes shoulde be ordeyned for diuers offences, as Physicions ordeyne diuers remedies for seuerall diseases. And suche paynes be ordeyned by the makers of lawes after the necessitye of the tyme, and after the disposition of the people. And thoughe that lawe that ordeyned suche paynes hath thereby a conformitye to the lawe of GOD: for that the lawe of God commaundeth that the people shall take away euyl from amonge them selues, yet they belong not so muche to the lawe of God, but that other paynes stādyng, the fyrst principles might be ordeyned and appoynted, and therfore that is the lawe that is called mosse properlye the lawe positiue and the lawe of manne.

And the Philosopher sayd in the thirde boke of hys Ethykes, that the entente of a maker of a Lawe is to make the people good, and to byng the to vertue. And though I haue somewhat in a generalitie shewed thee wherup the lawe

## The fourth chapter.

lawe of England is grounded. For of necessitie it must be grounded of the sayde lawes, that is to say of the law eternall, of the law of reason, and of the lawe of God. Nevertheless, I pray thee shewe me more speciallly wherupon it is grounded as thou thinkest, as thou before hast promised to dooe.

S. I will with good will dooe therein that lyeth in me, for thou hast shewed me a right plain and a straight way therto. Therefore thou shalt vnderstand that the lawe of Englande is grounded vpon sixe principall groundes. First it is grounded on the lawe of Reason. Seconde on the lawe of God. Thirdly, on diuers generall customes of the realme. Fourthly of diuers principles that be called Maximes. Fiftly on diuers particuler customes. Sixtly on diuers statutes made in parliametes by the kinge and by the common counsell of the realme. Of which groundes I shal speake by order as they be rehearsed before, and first of the law of reason,

Of the first ground of the lawe  
of Englande.

Thc. v. Chapter.

The first ground of the lawe of England is the law of reason, wherof thou hast treated before in the seconde chapter, the which is kept in this realme as it is in all other realmes and as of necessitie it must needs be as thou hast sayde before. D. But I woulde knowe what is called the lawe of Nature after the lawes of England.



Englande. S. It is not vsed among them that be learned in the lawes of Englande to reason what thinge is commaunded or prohibite by the law of nature, and what not, but al<sup>l</sup>  $\varphi$  reasoninge in that behalfe is vnder this maner: as when any thing is grounded vpon the lawe of nature: they say that reason wyll that such a thinge be done, and if it be prohibite by the lawe of nature, they saye it is againste reason or that reason will not suffer that it be done. D. Then I praye thee shew me what they that be learned in the lawes of the realme holde to be commaunded or phibit by the law of nature, vnder such termes and after suche maner as is vsed amongst them  $\varphi$  be learned in the sayde lawes. S. There be put by them that be learned in the lawes of Englad two degrees of the lawe of reason, that is to saye the law of reason primarie, and the law of reason secundarie, by the law of reason primarie he prohibite in the lawes of England, murther, that is the death of him that is innocent, perjury, deceit, breakyng of the peace, and many other like. And by the same lawe also it is lawfull for a man to defend him self against an vniust power so he kepe due circumstance. And also if anye promise be made by man as to the bodye it is by the law of reason vnde in the lawes of Englande. The other is called the law of secundarye reason the which is diuided into two braunches, that is to say: into the law of a secundary reason generall, and into a law of secundary reason particuler.

The law of a secundary reason generall is ground-  
 ed and deriued of that general law or generall  
 custome

## The.v.chapter.

custome of propertie, whereby goodes mouable & vnmouable be brought into a certayne property so that euery man may knowe his owne thinge. And by this braunch be prohibited in the lawes of Englande disseisins, trespassse in Landes and goodes, rescues, theft, vnlawful withholdyng of an other mannes goodes and such other. And by the same lawe it is a ground in  $\S$  lawes of Englande that satisfaccion must be made for a trespassse, and that restitution must be made of suche goodes as one man hath that belong to an other manne,  $\S$  dets muste be payde, couenauntes fulfilled, and such other. And because disseisins, trespassse in landes & goodes: theft, and suche other had not bene knowen, if the lawe of propertie had not bene ordeined. Therefore al thynges that be derpyed by reason out of the sayd law of propertie, be called the lawe of reason secundary generall, for the law of propertie is generally kept in all our countreyes. The lawe of reason secundary particuler is  $\S$  lawe is diuied vpon diuers customes generall and particuler, and of diuers maximes and statutes ordeined in this realme. And it is called  $\S$  lawe of reason secundary particuler, because  $\S$  reason in that case is deruied of suche a law that is onely holden for law in this realme, and in none other realme.

### ¶ Addicion.

D. I pray thee shew me some special case of such law of reason secundary particuler for an example. S. There is a lawe in Englande, whiche is a law of custome that if a man take a distresse lawfullye  $\S$  he shal put it in a poinde ouert there

to remayn tyl he be satisfied of that he distrained  
 for. And the therupon may be asked this questi-  
 on & if the beastes dye in pound for lack of meat,  
 at whose perill dye they, whether dye they at the  
 perill of him tat distrained or of hym that oweth  
 the beastes? D. If the lawe be as thou sayest  
 and than a man for a iust cause taketh a distresse  
 and putteth it in pounce ouerte, and no lawe  
 compelleth hym that distreyneth to geue them  
 meat, then it semeth of reason that if the distresse  
 dye in pound for lacke of meate that it dyed at &  
 perill of hym that oweth the beastes, and not of  
 hym that distrayned, for in hym that dystreyned  
 there can be assigned no default, but in the other  
 may be assigned a default, because the rente was  
 vnpayde. S. Thou hast geuen a true iudge-  
 ment and who hath taught thee to dooe so, but  
 reason deriued of & sayde general custome. And  
 the lawe is so full of such secundarye reasons di-  
 riued out of the generall customes and maxims  
 of the realme that some men haue affirmed that  
 all the lawe of the realme, is the lawe of reason,  
 but & can not be proued as me semeth as I haue  
 partely shewed befoze and more fully will shew  
 after. And it is not muche vled in the lawes of  
 Englande, to reason what Lawe is groun-  
 ded vpon the lawe of the firste reason pymarye,  
 or of the lawe of reason secundarye, for they be  
 moste commonly openlye knowen of them selfe,  
 but for the knowledge of the lawe of reason se-  
 curdary is greater difficultie, and therfore ther-  
 in depedeth muche the maner and forme of argu-  
 mentes in the lawes of Englande.

*Synops*

## The.vi.chapter.

And it is to be noted that al the deriuyng of reason in the lawes of Englande proceadeth of the first principles of the lawe or of some thyng þ is deriued of the. And therfore no man may rightlywyselye iudge ne groundly reason in þ lawes of Englande if he be ignorant in the first principles. Also al birdes, foules, wilde beastes of forestes, and warren, and suche other be excepted by the lawes of Englande out of the sayde general law and custome of propertie. For by the lawes of þ realme no propertie may be of them in any perso vnlesse they be tame. Neuerthelesse the eggess of Haukes, Herons, or suche other as builde in the grounde of any person be adiudged by the sayde lawes to belonge to hym þ oweth the grounde.

Of the second grounde of the lawe of Englande. The.vi.Chapter.

The second ground of the lawe of Englande is the law of God and therfore for punishment of them that offended agaynst the law of God, it is enquired in many courtes in thys realme, if any holde any opinions secretly or in anye other maner against the true catholike fayth. And also if any general custome were directly agaynst the law of God, or if any statute were made directly agaynst it, as yf it were ordeyned þ no almesse shoulde be geuen for no necessitie þ custome and statute wer voyd. Neuertheles the statute made in the.xxiii.yere of kyng Edward the.iii. wherby it is ordeined that no man vnder paine of imprisonment shal geue any almesse to any valiant beg-

beggers that may wel labour, that they maye so  
 be compelled to labour for their liuyng is a good  
 statute, for it obserueth the entent of the lawe of  
 God. And also by auctoritie of this law there is  
 a grounde in the lawes of Englande, & he that  
 is accursed shall maynetayne no accion in & kyn-  
 ges court, except it be in very fewe cases, so & the  
 same excommunication be certified before the kin-  
 ges iustices, in suche maner as & law of & realme  
 hath appointed. And by & auctoritie also of this  
 grounde & lawe of England admitteth the spiri-  
 tuall iurisdiction of dismes and offerpnyges. And  
 of all other thynges & of ryght belonge vnto it.  
 And recepueth also all lawes of & churche duye  
 made, and that excede not the power of them &  
 made them. In so much i many cases it behoueth  
the Kynges Justice to iudges after & lawes of  
the churche. D. Howe maye that be that the  
 kinges iustices should iudge in & kinges courts  
 after the lawe of the churche, for it semeth & the  
 church should rather geue iudgemēt in such thin-  
 ges as it may make lawes of, then & kinges Ju-  
 stices. S. That maye be done in many cases  
 wherof I shall for an example put this case. If  
 a writ of ryght of warde be brought of & bodye.  
 &c. And the tenant confessyng the tenour and the  
 nonage of the infant, sayeth & the infant was  
 married in hys auncesters dayes. &c. wherupon  
 xii. menne be sworne which geue this verdicte, &  
 the infant was married in the lyfe of hys aun-  
 cestour. And & the woman in the lyfe of his aun-  
 cestour sued a diuorice whereupon sentence was  
 geue that they should be diuorced. And that the

Secund p. 50.

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## The.vi.chapter.

heire appeled which hāgeth yet vndiscussed prais-  
yng the ayde of the iustice to know whether the  
infant in this case shalbe sayd maried or not. In  
this case if the lawe of the churche be y the sayde  
sentence of diuorçe standeth in his strenthe and  
vertue vntil it be adnulled vpon the said appele.  
That the infant at the death of hys auncestour  
was vnmariied because the firste mariage, was  
adnulled by that deuorçe. And if the lawe of the  
church be that the sentence of that deuorçe stan-  
deth not i effect til it be affirmed vpon y sayd ap-  
pele, then is the infant yet mariied, so that the va-  
lue of his mariage cannot belong vnto the lord.  
And therfore in this case iudgement condicional  
shalbe geuen. &c. And in likewylse the kinges iu-  
stice in many other cases shal iudge after y lawe  
of the churche like as the spiritual Iudges must  
in many cases, fourme their iudgement after the  
kynges lawes. D. Howe may that be, that  
the spiritual Iudges should iudge after the kin-  
ges lawes, I pray thee shew me sōe certain case  
thereof. S. Thoughe it be somewhat a di-  
gression fro oure firste purpose, yet I wyl not  
wythsaye thy desire, but wyl wyth good wyl  
put thee a case or two therof, that thou mayest  
the better perceiue what I meane. If A. and B.  
haue goodes ioyntly, and A. by his last wyl by-  
queteth his pyccion therin to C. and maketh the  
said B. his executour & dyed, & C. asketh the ex-  
ecucion of this wil in the spiritual court. In this  
case the iudges there be bound to iudge that wil  
to be voyd, because it is voyd by the lawes of the  
realme. And i likewise if a mā be outlawed, & after  
by

Exam

## The.vii.chapter. Fol.ii.

by his wil bequeteth certain goodes to John at stile, and make his executours and ope, the king sealeth y goodes and after geueth them agayne to y executours, and after John at stile sueth a a sitacion out of y spirituall courte against y executours, to haue execution of y wpli, in thys case the iudges of the spiritual court must iudge the wil to be voyde as the lawe of the realme is, y it is. And yet there is no suche Lawe of forfeiture of goodes by outlagary in the spiritual law.

### ¶ Of the thirde grounde of the lawe of England. The.vii.Chapter.

**T**HE thirde grounde of the lawe of England standeth vppon diuers generall customes of olde tyme vsed through all y realme, which haue bene accepted and approued by our souerain lord the kyng and his progenitours, and al their subiectes. And because the sayd customes be neither against y law of god, nor the law of reason, and haue ben alway taken to be good and necessarie for the comon wealthe of all y realme. Therefore they haue obteyned the strength of a lawe in so much that he y dothe agaynst them, doth against iustice. And these be the customes that propertie be called y commō law. And it shal alway be determined by y iustices whether there be any such general custō or not, & not bi.xii.mē. And of these general custōes & of certayn principles y be called maxims which also take effect bi y old custōes of y realme, as shal appere in y chap.next folowing depēdeth most part of y lawe of this realme.

9th all  
influen.

9th all  
influen.

3110

The.vii.chapter. Fol.12.

¶ Also by the olde custome of the realme no man shalbe taken inprisoned disseased nor otherwyle destroyed, but he be put to aunswere by the lawe of the land, and this custome is confirmed by the statute of Magna-carta the.xxvi.chapter.

¶ Also by the olde custome of the realme all men great and small shall do and receiue iustice in the kinges courtes, & thys custome is confirmed by the statute of Hat.i.chapter.

¶ Also by the olde custome of the realme, the eldest sonne is onely heire to his auncestour, and if there be no sonnes but daughters, then all the daughters shalbe heyre, and so it is of sisters and other kynswomen. And if there be neither sonne daughter, brother, nor sister, then shall the inheritance discende to the next kynsman oz kinswoman of the whole bloude to hym & had the inheritance of howe manye degrees soeuer they be from him. And if there be no heire generall nor speciall then the lande shall eschete to the Lorde of whom the lande is holden.

¶ Also by the olde custome of the realme landes shall neuer ascende, nor discende from the sonne to the father oz mother, nor to any other ancestor in & righte lyne, but it shall rather eschete to the Lorde of the fee.

¶ Also if any alyen haue a sonne that is an alien & after is made Denizen and hath another sone, and after purchaseth landes and dyed, the yonger sonne shal inherite as heire and not the eldest.

¶ Also if there be three brethren and the middlest brother purchase Landes and dyed wythout heirs of hys body, the eldest brother shall inherit

as

The .vii. chapter.

as heire to hym, and not the yonger brother.

118  
¶ Also if lande in fee simple discende to a man by the part of his father, and he dyed without heyre of his body, then the inheritauce shal discend to the next heire of y part of hys father. And if there be no such heire of the part of his father, then yf the father purchased the landes it shall go to the next heyre of the fathers mother, and not to the nexte heyre of the sonnes mother, but it shall rather Eschete to the Lord of the fee, but if a man purchase landes to hym and to his heyres, & dye without heyre of his body, as is said before, then y land shal discend to the next heyre of the parte of his father if there be any, and if not, thē to the next heyre of the part of his mother.

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2  
¶ Also if the sonne purchaseth landes in fee and dye without heyre of his bodye, the Lande shall discend to his vncle, & shal not ascende to his father, but if the father haue a sonne thoughe it be many yeres after the death of the elder brother, yet that sonne shall put oute hys vncle and shall enioye the land as heyre to hys elder brother for ever.

all  
¶ Also by the custome of the realme the chylde that is borne before spousels is bastarde and shal not inherite.

1  
2  
ms. hys & 2  
3 2  
¶ Also the custome of y realme is that no maner of goodes nor catels real nor personel shal neuce go to the heyre, but to the executors, or to the ordinarpe or administratours. ¶ Also the husband shal haue al the cattels parsonels that hys wife had at the tyme of the spousels, or after, & al to chatels reall if he ouer lyue hys wyfe but if he sell



sel or geue away the chatels reals and die bi that  
 sale or gift the interest of the wife is determined  
 & els they shal remain to the wife if she ouer liue  
 her husband. Also the husband shall haue all the  
 inheritaunce of his wyfe wherof he was leased  
 in dede in the right of his wife during the spou-  
 sels in fee or in fee taile general for terme of lyfe,  
 if he haue any childe by her to hold as tenant by  
 the curtesy of England & the wyfe shall haue the  
 third part of y<sup>e</sup> inheritance of her husband wher-  
 of he was leased in dede or in law after the spou-  
 sels, &c. but in y<sup>e</sup> case the wife at the death of her  
 husband must be of the age of .ix. yere or aboue or  
 els she shal haue no dowry. W. What if y<sup>e</sup> husband  
 at hys death be within the age of .ix. yere. S. I  
 suppose she shall yet haue her dower. Also the  
 old law & custoe of the realme is y<sup>e</sup> after the deth  
 of euery tenant y<sup>e</sup> holdeth his landes by knights  
 seruice the lord shall haue the warde & marriage  
 of the heire tyll the heire come to the age of .xxi.  
 yere. And if the heire in that case be of ful age at  
 the death of his auncestre, the he shall pay to his  
 Lord his relief, which at the common lawe was  
 not certayn, but by the statute of Magna carta,  
 it is put in certain, that is to say, for euery whole  
 knightes fee to pay .C.s. And for a hole Barony  
 to pay a C. mark for relief. And for a hole Erle  
 dome to pay a C. li. and after the rate. And if the  
 heire of such a tenant be a woman, and she at the  
 death of her ancestre be in thage. of .xiiii. yeres  
 the bi the comon law she shuld haue ben in ward  
 onely tyll .xiiii. yere, but by the statute of westm.  
 y<sup>e</sup> first in such case she shalbe in ward til .xvi. yere  
 And

## The .vii. chapter.

And if at the death of her auncester she be of the age of .xiiii. yere or aboute. she shalbe out of ward though the landes be holden of the king. And the she shal pay relief as an heyre male shall.

¶ Also of landes holdē in socage if the auncester dye, his heire beyng within the age of .xiiii. yeres the next frende of the heire to whom the inheritance may not discende shal haue the warde of his body and landes till he shall come to the age of .xiiii. yere and then he may enter. And whē the heire cometh to ʒ age of .xxi. yere. the the gardein shall yeld him accompt for the profites therof by hym receiued.

¶ Also such an heire in socage for his reliefe shal double his rent to the Lorde the yere folowynge the dearch of his aūcester, as if his auncester held by .xii. d. rent the heire in the yere folowynge shal pay the .xii. d. for his rent, and other .xii. d. for his reliefe. And the relief he must pay though he be within age at the death of his auncester.

¶ Also there is an olde law and custome in thys realme ʒ a freholde by way of fessement, gifte, or lease passeth not thout liuerpe of season be made vpon the lande accordyng though a dede of fesse mēt be therof made and deliuered, but by way of surrender, particion & eschaunge a freholde may passe without liuerpe.

¶ Also if a man make a wil of land wherof he is seased in his demesne as of fee, ʒ wil is void, but if it had stand in fesses handes it had bene good. And also in London suche a wpll is good by the custome of the citie if it be inrowled.

¶ Also a lease for terme of yeres is but a chatel ʒ law

lawe, & therfore it may passe wout any livery of  
feason, but otherwise it is of a state for terme of  
life for & is a frehold in & law: & therfore livery  
must be made therfore opels & frehold passeth not

Also by the olde custome of the realme a man  
may distreine for a rent service of comon right.

And also for a rent reserved vpon a gift in taile  
a lease for terme of life, of yeres, & at wyl, and in  
such case the Lord may distreyn the tenants or  
beastes, as sone as they come vpon the ground,  
but & beastes of straungers & come in but by ma-  
nner of an escape, he may not distrein til they haue  
bene leuāt and couchant vpon & ground: but for  
det vpon an obligacion nor vpon a contract, nor  
for accompt ne yet for arerages of accompte, nor  
for no maner of trespase, reparacions, nor suche  
other no man may distrayne.

¶ Also by the old law and custome of the realme all issues that shalbe ioynded betwixt party and party in any courte of recorde within the realme except a fewe wherof it neaderth not to treat at this time, must be tried by xii. fre and lawfull me of the visne that be not of affinitie to none of the partes. And in other courtes that be not of record, as in the county, court baron, hundred and such other lyke, they shall be tryed by the oth of the parties and not otherwise onlesse the parties assent that it shalbe tryed by the homage. And it is to be noted that Lordes, Barons, and al piers of the realme be excepted out of such tryals if they wyll, but if they will wilfully be sworne therin, some say it is none error. And thei maye if they wyll haue a writt oute of the chauncery directed

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## The. vii. chapter.

to the Shriſe commaunding him that he ſhal not impanel them vpon no enqueſt. And of thys that is ſayd before it appereth that & cuſtomes aforeſayd noꝝ other lyke vnto them, wherof be verye many in the lawes of Englande can not be proued to haue the ſtrength of a law only by reaſon, for how maye it be proued by reaſon that the eldeſt ſonne ſhall onely inherite his father, and the yonger to haue no part, oꝝ that he huſband ſhall haue the whole lande for terme of his lyfe as tenaunt by the curteſye in ſuche maner as before appeareth: And & the wyfe ſhall haue onely the thirde parte in the name of her dower, and & the huſband ſhal haue all the goodes of his wyfe as his owne. And that if he dye liuinge the wyfe, & his executors ſhal haue the goodes, and not the wyfe. All theſe and ſuche other can not be proued onely by reaſon that it ſhould be ſo and no other wiſe: althoughe they be reaſonable, and & wyth the cuſtome therein vſed ſuffiſeth in & law. And a ſtatute made againſt ſuch general cuſtomes ought to be obſerued becauſe they be not merclie the lawe of reaſon.

¶ Also the lawe of propertie is not the lawe of reaſon but a law of cuſtome how be it that it is kept, and is alſo ryght neceſſary to be kept in all realmes and among ail people. And ſo it may be numbꝛed amonge the generall cuſtomes of the realme. And it is to vnderſtande that there is no ſtatute & treateth of the begynnyng of the ſayd cuſtomes: ne why they ſhould be holden for law. And therfore after them & be learned in & lawes of the realme: & olde cuſtome of the realme is the onely

*huſband*

The.viii.chapter. Fol.15.

only and sufficient auctoritie to them in þ behalf.  
And I pray thee shew me what doctours holde  
therin, & is to saye, whether a custome onely be  
sufficient auctoritie of any lawe. D. Doctours  
holde þ a lawe grounde vpon a custome is the  
most surest law, but this þ must alwaies vnder-  
stande therwyth, & such a custome is neither con-  
trary to the law of reason, nor to þ lawe of God.  
And now I pray thee shew me somewhat of the  
Maximes of the lawe of England wherof thou  
hast made mencion before in the.iiii.Chapter. &  
I will with good will.

¶ Of the.iiii.ground of the lawe of  
England. The.viii.Chapter.

The.iiii.grounde of the law of England stan-  
deth in diuers principles that be called in the  
lawe maximes, & whiche haue bene alwayes ta-  
ken for law in this realme, so that it is not law-  
full for none that is learned to denye them, for e-  
uery one of those maximes is sufficient auctority  
to him selfe. And which is a maxime, and whiche  
not, shal alway be determined by the iudges, and  
not by .xii. men. And it nedeth not to asseyue any  
reason, why they were first receiued for maximes  
for it suffiseth that thei be not against the law of  
reason, nor þ lawe of god, and that they haue al-  
way be taken for law. And such maximes be not  
onely holden for lawe, but also other cases lyke  
vnto the & al thinges þ necessarily foloweth vpon  
the same are to be seduced to þ like law. And ther-  
fore most comely there be assigned some reasons or  
con-



## The.viii,chapter.

consideracion why suche maxymes be reasonable to the entent that other cases lyke may the moze conueniently be applyed to them. And they be of the same strength and effect in & law as statutes be. And though & general custome of the realme be the strength and warrāt of the sayd maxymes as they be of the general customes of the realme, yet because & sayd general customes be in maner knowen thzough the realme aswel to them that be vnlearned as learned, and may lightly be had and knowen, and that with little study. And the maxymes be only knowen in the kynges courtes or among them that take great study in the law of the realme, & among few other persons. Therfore thei be set in this writing for seuerall groundes and he that listeth may so accompt them, or if he wyl he may take them for one grounde after his pleasure, of whyche maxymes I shall hereafter shew thee part.

• First there is a maxime that escuage vncertain maketh knightes seruice.

• Also there is another maxime that escuage certayne maketh socage.

• Also that he that holdeth by castel garde, holdeth by knightes seruice, but he holdeth not by escuage. And that he that holdeth by .xx. l. to the garde of a castell holdeth by socage.

• Also there is a maxime that a discente taketh awaye an enter.

• Also that no prescription in landes maketh a ryghte.

• Also that a prescription of rent and of profites appender out of land maketh a ryght,

Also

Also that the limitation of a prescription generally taken is fro the time that no mans mind remeth to the contrary.

Also that assignes may be made vpon landes geuen in fee for tearme of life, or for terme of yeres though no mencion be made of assignes: and the same lawe is of a rent that is graunted, but otherwise it is of a warranty and of a covenant.

Also that a condicion to auoyde a freeholde cannot be pleaded without dede, but to auoyde a gyfte of a chatell it maye be pleaded wythout dede.

Also that a release or a confirmacion made by hym that at the tyme of the release or confirmacion made had no right is voyde in the lawe, though a ryght come to hym after, excepte it bee with warranty, and then it shal barre hym of all ryghte that he shall haue after the warrantye made.

Also that a right or title of accion that onelye dependeth in accion cannot be geue nor granted to none other but onelye to the tenaunt of the ground, or to him that hath the reuercion or remainder of the same lande.

Also that in an accion of det vpon a contracte the def. may wage his lawe, but otherwysc it is vpon a lease of landes for tearme of yeres or at will.

Also, that if an exigent in case of felony be awarded against a man: he hath therby forth forfeited his goodes to the king.

Also, if the soune bee attaynted in the lyfe of  
C. i. the

the.viii.chapter

**the father, and after he purchaseth his chartour of pardone of the kunge, and after the father died. In this case the lande shal eschete to the lord of the fee, in so muche that though he haue a younger brother, yet the land shall not discend to him for by the atteindre of y elder brother, the bloud is corrupte, and the father in lawe dyed without heire.**

**Also, if an Abbot or a Prior aliene the landes of his house and died, in that case, though his successor haue righte to the landes, yet he maye not enter: but he must take his accion that is appointed him by the lawe.**

**Also there is a Maxime in the lawe, that if a villayne purchase landes and the lord entre, he shal enioy the land as his own: but if the vilaine aliene befoze the lord entre, that alienacion is good. And the same lawe is of goodes.**

**Also if a man steale goodes to the value of. xii. s. or a boue, it is felony, & he shal die for it. And if it bee vnder the value of. xii. s. then it is but petite larcinie, & he shal not die for it, but shalbe otherwise punished after the discrecion of y Judges, excepte it bee taken fro the persone, for if a man take anye thyng, howe little soener it bee, from a mannes persone felonousslye, it is called robbery, & he shal dye for it.**

**Also he that is arrayned vpon an inditement of felonye shal bee admitted in fauour of lyfe to chalenge. xxxv. iurours perentoriye, but if hee chalenge anye aboue that nountber, the lawe taketh him as one that hath refused the lawe, because he hath refused thre whole enquestes, & therefore**

therfore he shal dye, but with cause he may challenge as many as he hath cause of chalenhe to. And further it is to be vnderstand, that such perrentory challenge shal not be admitted in appele because it is at the suite of the part.

Also the lande of euery man is in the lawe enclosed fro other, though it lye in the open field. And therefore if a man doe a trespass, therin the writ shalbe quare clausum fregit.

Also that rentes, commons of pasture of turtary reuercions remainders, nor such other thinges whiche lye not in manuel occupacion, maye not be geuen nor graunted to none other wythout wytyng.

Also that he that recouereth det or damages in the kinges courte by such an accion within a Capias lay into y processe may within a yere after y recovery haue a Capias ad satisfaciendum to take the body of the defendaunt, and to commit him to pryson till he haue payde the det & damages, but if ther lay no Capias in y first accio, then the plentife shal haue no Capias ad satisfaciendum, but must take a fieri facias, or an Elegit bin the yere: or a Scire facias after y yere, or within the yere if he wyl.

Also if a release or confirmacion be made to hym, that at the tyme of the release made hadde nothinge in the lande. &c. The release or confirmacion is voyde excepte certeine cases, as to vouchie and certaine other which nede not here to be remembred.

Also there is a Maxime in the lawe of Englande, that the kynge maye dyssease no man, C. ii. that

## the.viii.chapter

that no man may disleafe the kyng ne pull any reuerſion or remaynder out of him.

Also the kynges excellencie is ſo hygh in the lawe, that no freehold may be geuen to the king ne bee deriued from hym, but by matter of recoꝛde.

Also, there was ſometyme a Maxime and a lawe in England that no manne ſhould haue a writte of right, but by ſpeciall ſuite to the king, & for a fine to be made in the chauncery for it. But theſe maximes be chaged by the ſtatute of Magna carta, the .xvi. Chapter, where it is ſaid thus. *Nulli negabimus, nulli vendemus rectum vel iuſtitiam.* And by the wordes *nulli negabimus*, a man ſhal haue a wrytte of righte of courſe in the Chauncerie without ſuing to the kyng for it. And by the woordes, *nulli vendemus*, he ſhal haue it without fyne: and ſo many times the old Maximes of the law be chaunged by ſtatutes.

Also, though it be reaſonable that for the manifold diuerſities of accions that be in the lawes of England, that there ſhoulde be diuerſities of proceſſe, as in the reall accions after one maner and in perſonall accion after an other maner: yet it cannot be proued merelye by reaſon that the ſame proceſſe ought to be had & none other: for by ſtatute it mighte bee altered. And ſo the ground of the ſaid proceſſe is to be referred onely to the Maximes and cuſtomes of ʒ realmes. And I haue ſhewed thee theſe Maximes befoꝛe rehearſed, not to the entent too ſhewe thee ſpecially what is the cauſe of the lawe in theim, for that would aſke a great reſpite. But I haue ſhewed



## The.viii.chapter, fol.18.

shewed the onely to the entent that thou mayst perceiue that the sayd Maximes and other lyke, may conueniently beset for one of the groudes of the lawe of Englande. More ouer, there bee dyuers cases, whereof I am in doubte whether they be onely Maximes of the lawe or that they be grounded vpon the lawe of reason, wherein I pray the let me heare thine opinion.

D. I pray the shew those cases that thou meanest, and I shal make thee aunswere therein as I shal see cause.

Hereafter foloweth diuers cases, wherein the Student douteth whether they be onely Maximes of the lawe, or that they be grounded vpon the lawe of reason.

## The.ix.Chapter.

The lawe of Englande is that if a man commaunde another to dooe a trespassse, and he doeth it, that the commaunder is a trespassser. And I am in doubte whether that be onely by a Maxime of the lawe, or that it be by the lawe of reason.

Also, I am in doubte vpon what lawe it is grounded, that the accessorie shal not be put to aunswere before the principal ec.

Also, the lawe is that if an Abbot bye a tihng that commeth to the vse of the house, and dyed that hys successours shal be charged. And I am some what in doubte vpon what grounde that

C.iii. law

## The .ix. chapter

lawe dependeth.

m Also that he that hath possession of lād, though it be by disseison hath right againste al men, but agaynst him that hath right.

m Also, that if an accion real be sued ageinst any mā & hath nothing in the thinge demaunded, the writ shal abate as at the common lawe.

m Also that the alienacion of the tenant hāging the writ nor his entre into religion, or if he be made a knight, or if she be a woman and take an husbande hanging the writ, that the writte shal not abate.

m Also if land & rent & is going out of the same land come into one mannes hand of like estate & like suretie of title, & rent is extincte.

m Also if land discende to him that hath right to the same lande before, he shalbe remitted to hys better title if he wil.

m Also if two titles be concurraunt together, the eldest title shalbe preferred.

Also that every man is bound to make recompence for such hurt as his beastes shal do in the corne or grasse of his neighbour, though he know not that they were there.

Also if the demaundaunte or playntiffe hangyng hys writte wyll entre into the thyng demaunded, thys writte shal abate. And it is manye tymes very harde and of great difficulte to knowe what cases of the law of England bee grounded vppon the lawe of reason, and what vpon custome of the Realme, and though it be hard to descusse it: it is very necessary to be known, for the knowledge of the perfitt reaso of the lawe

The .ix. chapter, fol. 18.

lawe, and if any man thinke that these cases be-  
fore rehersed be grounded vpon the law of rea-  
son, then he maie referre them to the first groude  
of the lawe of Englad which is the lawe of rea-  
son whereof is made mencion in the. v. chap. And  
if any manne thinke that they be grounded vpo  
the law of custome, then he maye referre them  
to the maximes of the law, which be assigned for  
the thirde grouid of the law of England wherof  
mencion is made in the. viii. cap. as before appe-  
reth.

D. But I praie the shew me by what auctozite  
is it proued i the lawes of Englade that y casis  
that thou hast put before in the. viii. chap. & such  
other which thou callest maximes ought not to  
be denied, but ought to be take as maximes for  
sith they can not be proued by reason as thou a-  
greeest thy selfe they ca not, thei maie as lightlpe  
be demied as affirmed onles there be soe suffici-  
ent auctozity to approue them.

S. Manie of the customes and maximes of the  
lawes of Englande be knownen by the vse and  
the custome of the realme so apparantlpe that  
it nedeth not to haue any lawe writren thereof  
for what nedeth it to haue anye lawe wrytten  
that the eldest sonne shall enherite his father,  
or that al the doughters shal enherite together,  
as one heire if there be no sonne, or that the hus-  
band shal haue the goodes & chatels of his wife  
that she hath at the tunc of the spousels or aff. or  
y a bastard shal not inherit as heire or that exe-  
cutozs shal haue the disposicio of al. y goodes of  
theire

## The.x.chapiter.

theyr testatour : and if there bee no executours that the Ordinarie shall haue it, and the heire shall not meddle with the goodes of his auncestre: but anye particuler customes helpe him. The other Maximes and customes of the lawe that be not so openlye knowen among the people may be knowen partelye by the lawe of reason: and partely by the Bookes of the lawes of England called yerres of tearmes, ondy partly by dyuers recozdes remayning in the Kinges courtes and in his treasury. And specially by a booke that is called the Registre, and also by dyuers statutes, wherin many of the sayd customes and Maximes be oft resyted, as to a diligēt searcher wil euidently appeare.

### ¶ Of the fyfth ground of the lawe of England

#### The.x. Chapter.

**T**he fyfth ground of the lawe of Englande standeth in diuers particuler customes vsed in dyuers countie, townes, Cities, and Lordshippes in thys Realme, the whyche particuler customes, because they bee not agaynst the lawe of reason nor the lawe of god, though they be agaynst the sayd generall customes or Maximes of the lawe: yet neuertheles they stande in effect and be taken for lawe: but if it ryle in question in the kynges courtes, whether there bee any such particuler custome or not, it shalbe tried by .xii. men, and not by the Judges, excepte the

thesame particuler custōe be of record in y<sup>e</sup> same court. Of which particuler customes, I haue here after noted some for an example.

First there is a custome in Kent that is called Gauekynd, that al the brethren shal enherite together, as sisters at the common lawe.

Also, there is another particuler custome, that is called burghenlish, where the yonger son shal inherit before the eldest, and that custome is in Nottingham.

Also there is a custome in the Citie of London that free men there, maye by their testament enrouled bequeth theyr landes that they be ceased of, to whom they wyl except to mortmaine. And if they be Citezens and freemen, then they maye also bequeth their landes to mortmaine.

Also in Gauekind though the father be hanged the sonne shal inherite. For their Customie is, the father too the boughe, the sonne to the plough.

Also in some countreyes the wyfe shal haue the halfe of the husbandes landes in the name of her dowry as long as she liueth sole.

Also in some countrey the husbaud shal haue the halfe of the inheritance of his wyfe, though he haue no issue by her.

Also in some countrey an infant when he is of age of .xv. yere may make a feoffement, and the feoffement good. And in some countrey when he can meat an elle of cloth.

Of the sixth ground of the lawe  
of England.

The



## The .xi. chapter.

### The .xi. Chapter.

**T**he sixth grounde of the lawe of Englande standeth in diuers statutes made by oure so-ueraine Lorde the King and his progenitours and by the lordes spiritual & tempozal, & the commons in diuers parliementes in such cases wher the lawe of reaso, the lawe of God, customes, maximes ne other groundes of the law seemed not to be sufficient to punishe euill mē, & to rewarde good men. And I remembre not that I haue seene any other groundes of the law of Englād, but onely these that I haue before remembred. Furthermoze it appereth of that I haue sayed before that oft times two or thre groundes of the law of Englād must be ioyned together, or that the plaintife can open and declare his righte, as it may appere by this example. If a man entre in to another mannes lande by force, & after maketh a scoffment for maintenāce to defraude the plentife frō his accion. In this case it appereth that the sarde vnlawefull entre is prohibite by the lawe of reason, but the playntife shall reco-uer treble damages, that is by reason of the statute made in the .viii. yere of king. Hēry the .vi. & ix. Chapter. And that the damages shalbe sealed by .xii. mē that is by y custome of the realme. And soo in this case thre groundes of the lawe of Englande maintene the playntyfes accion. And so it is in diuers other cases that neede not to be remembred now, and thus I make an ende for this time, to speake anye ferther of the groundes of the law of Englād. **D** I thanke the

the for the gret paine that thou hast taken ther-  
in neuertheles for as much as it appereth that  
thou hast sayde befoze, that the lerned menne of  
the lawe of Englande pretende, to verifys that  
the lawe of Englande wyll nothpug doe, ne at-  
tempte ageynst the lawe of reason, nor the lawe  
of God, I pray the aunswer me to some questy-  
ons grounded vpon the lawe of England howe  
as thou thinkest the law may stand with reason  
or consience in them.

S. But the case & I shal make aunswer ther-  
in as wel as I can.

The first questiō of the Doctoure of the lawe  
of England and consience.

The.xii. Chapter.

I haue heard saye, that if a manne that is  
bonnde in an Obygacion paye the money:  
but he taketh no acquitaunce or if he take one  
and it happeneth hym too lese it, that in that  
case he shall bee compelled by the lawes of  
Englande to paye the monye agayne, and  
howe maye it bee sayed then that, that lawe  
standeth wyth reason or consyence, for as it  
is grounded vpon the law of reason that dettes  
ought of right to be payde, so it is grounded vpon  
the lawe of reason (as me semeth) that when  
they bee payed that he that payde them shoulde  
be discharged. S. fyrste thou muste vn-  
derstande that it is not the lawe of Englande,  
that if a manne that is bounde in an Obyga-  
cion paye the money wythoute acquytaunce

## The. xii chapter

Or if he take acquytaunce and leese it, that therfore the law determineth that he ought of right to pay the money estesones, for that lawe were both agaynst reason and conscience, but though it is that there is a general Maxime in the lawe of England, that in an accion of dette sued vpon an obligacion, the defēdant shal not pleade that he oweth not the money, ne can in no wyse discharge hym selfe in that accion, but he haue acquitaunce or some other wrytyng sufficient in the lawe or some other thyng lyke, wytnessyng that he hath payde the money, and that is ordeyned by the lawe to auoyde a greate inconuenience that elles might happen to come to manye people, that is to say: that euery man by a nude paroll and by a bare auerment shoulde auoyde an obligacion. Wherefore to auoyde that inconuenience the lawe hath ordeyned that as the defēdant is chastised by a sufficiente wrytyng, that so he must be discharged by sufficient wryting, or by some other thyng of as high auctoritie as the obligacion is. And though it may folowe thereuppon, that in some particuler case a man by occasion of that general Maxime may be compelled to paye the money agayne that he payde before: yet neuerthelesse, no default can be therfore assigned in the lawe. For like as makers of lawe take hede to suche thynges as may oft fall, and dooe moost hurte among the people rather then to particuler cases. So in lyke wyse the generall groundes of the lawe of Englande hede moze what is good for many, then what is good for one singuler person only. And because  
it shoulde

it shoulde be a hurte to manye, if an obligacion should be so lightly auoyded by worde, therfore the lawe specially preuenteth that hurte vnder such maner as before appeareth. And yet intendeth not noz commaundeth not, that the money of ryght ought to be payde agayne, but setteth a generall rule which is good and necessary to all the people, and that euerye man may well kepe without it be throughe his owne default. And if such default happen in any person, whereby he is without remedy at the common lawe, yet he may be holpen by a Sub pena, and so he maye in many other cases where conscience serueth for hym, that were to long to rehearse now.

D. But I pray thee shew me vnder what maner, a manne may be holpen by conscience. And whether he shal be holpen in the same courte oz in an other. S. . . Because it cannot bee well declared where a man shal be holpen by conscience & where not, but it be firste knowen what conscience is, therfore because it porteyneth to thee most properly, to treat of the nature and qualitie of conscience, therfore I praye the that thou wilt make me some brief declaracion of the nature and qualitie of conscience, & then I shall aunswere to thy question aswel as I can.

D. I wil with good wille dooe as thou saist, and to the entent that thou mayst the better vnderstande that I shal say of conscience, I shall first shewe thee what Sinderesis is, and then what reason is, & then what conscience is, and howe these three differ among themselves, I shal somewhat touche.

¶ What

## The.xiii.Chapter.

What sinderesis is.

## The.xiii.Chapter.

**S**inderesys is a naturall power of the soule sette in the hyghest parte thereof mouyng and sterring it to good and abhorring euil. And therefore Sinderesis neuer sinneth noz erreth. And this sinderesis our Lord put in man to the intent that the ordre of thinges should be obserued. For after saint Deonise the wysedome of god ioyneith the beginning of the second things to the laste of the firste thinges, for aungel is of a nature to vnderstand without serching of reason, and to that nature man is ioyned by Sinderesis, the whiche Sinderesis maye not wholy be extincted neither in mā ne yet in dāpned soules. But neuertheles as to the vse & exarlsie thereof, it maye bee let for a time eyther throughe the darkenes of ignoraunce oz for vndiscrete delectacion, oz for the hardnes of obstinacie. First by the darkenes of ignoraunce Sinderesis may bee let that it shall not murmure ageinste euill, because he beleueth euil to be good, as it is in heretikes, the which when they dye for the wyckednes of their Erroure, beleue that they dye for the verie trouth of the fayth. And by vndiscrete delectacion, Sinderesis is sometyme soo ouer layde that remorce oz grudge of conscience for the tyme cā haue no place. For the hardnes of obstinacy Sinderesis is also let that it maye not stirre to goodnesse as it is in dampned soules



soules that bee so obstinate in euell that they maye neuer be enclined to good. And though Sinderelis maye be sayde to that pointe extincte in dampned soules : yet it maye not bee sayde that it is fully extincte to all intentes.

For they alwaye murmure ageinste the euill of the paine that they suffer for sinne. And so it maye not be sayde that it is vniuersallpe, and to all intentes, and to al tymes extincte, and thys Sinderelis is the beginning of all thinges that maye be learned by speculation or studie, and minystrerh the generall groundes and pynccples thereof. And also of all thinges that are to be done by man, an example of suche thinges as many be lerned by speculacio appereth thus: Sinderelis saith that euery hole thinge is more then anye one parte of the same thinge, and that is a sure grounde that neuer faileth. And an example of thinges that are to be doone, or not to be done: as where sinderelis saith no euil is to be done, but that goodnes is to be doone and followed, and euell to be fledde and such other.

And therfore Sinderelis is called by some mē, the lawe of reason, for it ministreth the pynccples of the lawe of reason, the whiche be in euery manne by nature in that he is a reasonable creature.

¶ Of reason.

The .xiiii. Chaptre.

## The.xiiii.Chapter.

**W**hen the first manne Adam was create,  
 he receyued of God a double eye, that  
 is to say, an outwarde eye, whereby hee  
 might see visibie thinges, and knowe his bode-  
 ly enemyes and eschewe them. And an inwarde  
 eye, that is the eye of the reaso, whereby he might  
 see his spiritual enemyes that fighteth agaynst  
 his soule and beware of them. And amonge all  
 gyftes that god gaue to man, thys gyft of reaso  
 is the most noblest, for thereby man precelleth al  
 beastes, and is made like to the dignitie of An-  
 gelles, discernyng trouthe from falshed, and euyl  
 from good. Wherefore he goeth farre from the  
 effect that he was made to when he taketh not  
 hede to the trouthe, or when he preferreth euyl  
 before good. And therefore after Doctours rea-  
 son is the power of the soule, that discerneth be-  
 twene good and euyl, and betwene good and  
 better comparynge the other: the whyche also  
 sheweth vertues, loueth good, and fleeth vices.  
 And reason is called righteous and good, for it  
 is confirmable to the wille of God, and that is  
 the first thyng, and the first rule that al thinges  
 must be ruled by, & reason that is not righteous  
 nor strayght: but that is sayd culpable, is either  
 beecause shee is deceiued wyth an erreure that  
 might be ouercome, or elles throughe her pryde  
 or slothfulnes she enquireth not for knowledge  
 of the trouthe that ought to bee enquired. Also  
 reason is deuyded in two parties, that is to say,  
 into the higher part and into the lower parte.  
 The higher part hedeth heauenlye thynges and  
 eternall, and reasoneth by heauenlye lawes: or  
 by

## The fiftene Chapter. Fol. 256

by heauenly reasons what is to be done, & what is not to be done, and what thynges god commaundeth, and what he prohibiteth. And this higher part of reason hath no regard to transitory thynges, or tēporal thynges: but y sometime as it wer by maner of counsell she byngeth forth heauenly reasons to order wel, temporal thynges. The lower part of reason worketh most to gouerne wel temporal thynges. And she groundeth her reasons much vpon lawes of man, and vpon reason of man, whereby she concludeth that is to be done, that is honest and expedient to the common wealth, or not to be done for it is not expedient to the common wealth. And so that reason wherby I know god and such thynges as pertain to god, belongeth to the highest part of reason. And that reason wherby I know creatures, belongeth to y lower part of reason. And though these two partes, that is to say, the hygher parte and y lower part be one in dede essence, yet they differ by reason of their working and of their office as it is of one self eye: that somtyme looketh vppward, and somtyme downwarde.

## Of conscience. The.xv.Chapter.

This woord conscience, which in Latin is called Consciencia is compounded of this preposition: cum, that is to say in English, with and with this notwne sciencia, that is to say in English, knowledge, and so conscience is as much to say as knowlage of one thig with anothe r thig, and cōscience so taken is nothing els, but an applying

D.1.

plying

## the fiftene Chapter.

plyng of any science or knowledge to some particular act of mā. And so cōscience may sometime erre & sometime not erre. And of science thus taken, doctours make many discriptions: whereof one doctour sayth, that conscience is che law of our vnderstandyng. Another that conscience is an habite of the mynde discernyng betwixt good and euill. An other that conscience is the iudgement of reason, iudgeyng on the particular actes of man, all which sayinges agree in one effect, & is to say that conscience is an actual applyng of any cōnyng or knowledge to such thynges as be done: wherupon it foloweth that vpon the most parfit knowledge of any law or cunnyng. And of the most perfit and most true applyng of & same to any particular acte of man, foloweth the most perfit, the most pure, and the most best cōscience. And if there be default in knowyng of the truth, of suche a law, or in the applyng of the same to particular act, than therupon foloweth an erroz or default in conscience, as it may appere by this exāple. Sinderellis ministrereth a vniuersal principle that neuer erreth, that is to say, that an vnlawful thig is not to be done. And than it might be takē by some man that euery oth is vnlawfull because our lord saith. Mat. v. Ye shal in no wise swere. And yet he that by reason of the said wordes wil hold that it is not lawful in no case to swere erreth in conscience, for he hath not the perfit knowlage & vnderstāding of the trouth of the said gospel, nor he reduceth not the saying of scripture, to other scriptures in which it is grated & in some case an oth may be lawfull: & the cause  
why

## The fiftene Chapter. Fol 26.

why conscience may so erre in the said case, and in other like, is because cōscience is formed of a certain particuler propolicion or question grounded vpon vniuersal rules ordeined for such thigs as are to be done. And because a particuler propoliciō is not knowē of himself, but must appere & be serched by a diligent serche of reason, therfore in the serch & in the cōscience that should be formed therupō may happen to be error, & therupon it is said that there is error in cōsciēce, which error cometh either because he doth not assent to that he ought to assent vnto, or els because his reason wherby he doth referre one thyng to another, is deceyued. For further declaraciō wherof it is to vnderstand & error in conscience cometh. vit. manner of waies. First is through ignorance: & that is whan a mā knoweth not what he ought to do, & than he ought to aske cōsēl of thē that he thinketh most expert in that science wherupen hys doubt riseth. And if he can haue no counsell than he must wholly commit him to god: and he of his goodnes wyll so order hym, that he wyll saue hym from offence. The seconde is through negligence, as whan a man is negligent to search hys owne conscience, or to enquire the trouth of othē. The thyrde is through pryde, as whan he wyll not meken hymselfe ne beleue them that be better and wyser than he is. The fourth is thowt singulartie as whan a man foloweth his owne wit, and wyll not confyrme hymselfe to othē, nor folow & good cōmō waies of good men. The fift is through an inordinat affectiō to hyself wherby he make th cōscience to folow his desire.



## the fiftene Chapter.

& so he causeth her to go out of her right course.  
 The sixth is through pusillanimitie wherby some  
 person dzedeth oft tymes such thynges as of rea-  
 son he ought not to dzed. The seuēth is through  
 perplexite, and that is when a man beleueth him-  
 self to be so set betwixt two synnes that he thyn-  
 keth it vnpossible, but that he shal fal into & one,  
 but a man can neuer be so proplexed in dede, but  
 thzough an errour in conscience: and yf he wyl  
 put away that errour he shalbe deliuered. Ther-  
 fore I pray the that thou wilt alwaies haue a  
 good conscience, and if thou haue so, thou shalt  
 alwayes be mery, and if thyne own hert reprove  
 the not, thou shalt alwayes haue inward peace.  
 The gladnes of rightwylse men is of god and in  
 god, and their ioye is alwayes in trouthe & good-  
 nes. There be many diuersities of conscience, but  
 there is none better then that, wherby a mā true-  
 ly knoweth hi self. Many mē know many gret &  
 high cunnynge thynges, & yet know not the self, &  
 truly he that knoweth not himself, knoweth no-  
 thing wel. Also he hath a good and a cleane con-  
 science, that hath puritie and cleannes in his hert  
 trouthe in his worde, & rightwisenes in his dede.  
 And as a light is set in a lanterne that al is in  
 the house may be seen therby: so almighty God  
 hath set sciēce in the middes of euery reasonable  
 soule as a light wherby he may discern & know  
 what he ought to doe, and what he ought not to  
 do. Therefore for as much as it behoueth the to be  
 occupied in such thynges as pertain to the law.  
 It is necessarie that thou euer hold a pure and a  
 cleane conscience, specially in such thynges as cō-  
cerne

the sixtene Chapter. fo. 27.

cerne restitucio : for the synne is not forgiven, but the thyng that is wrongfully taken be restored. And I counsel the also y thou loue that is good and flee that is euyl, and that thou do to another as thou wouldest should be done to the, and that thou do nothing to other that thou wouldest not should be done to the. That thou dooe nothing against trowth, that thou liue pealably with thy neighbour, and that thou do iustice to euery mā, as much as in the is. And also that in euery general rule of the law, thou do obserue and kepe equitie: & if thou do thus, I trust the light of the lanterne, that is thy conscience shall neuer be extincted. S. But I pray the shew me what is that equitie that thou hast spoken of before, and that thou wouldest that I should kepe. D. I. wil with good wil shew the somewhat therof.

What is equitie. The.xvi.Chapiter.

EQUITIE is a rightwisenes that cōsidereth all the perticuler circumstaunces of the dede, the which also is tēpered with the sweteness of mercy. And suche an equitie must alway be obserued in euery law of man, and in euery generall rule therof, and that knew he wel, that said thus. Lawes couet to be ruled by equitie. And y wise man saith. Be not ouer much ryghtwise: for the extreme rightwisenes is extreme wrong, as who sayth: yf thou take al that the wordes of the law geueth the, thou shalt somtyme do against y law. And for the plainer declaracion what equitie is, thou shalt vnderstand that lieth the dedes & actes

## the sixtene Chapter.

of men, for which lawes been ordayned, happen in diuers maners infinitely. It is not possible to make any general rule of the law, but that it shal faile in some case. And therfore makers of lawes take hede to such thinges as may often come and not to euery particuler case, for they could not though they would. And therfore to folowe the wordes of the law, wer in some case both against iustice and the common weith: wherfore in some cases it is necessarye to leaue the wordes of the law, and to folow that reason and iustice requirereth, and to that intent equitie is ordeyned: that is to say, to temper and mitigate & rigour of the law. And it is called also by some men *Epicaia*, the which is no other thyng but an excepcion of the law of god: or of the lawe of reason from the generall rules of the law of man: whan they by reason of their generalitie would in any particuler case iudge against the law of god, or the lawe of reason, the which excepcion is secretly vnderstand in euery general rule of euery positieue law. And so it appereth that equitie taketh not awaie the very right, but only that, & semeth to be right by the general wordes of the lawe, nor it is not ordeined against the crucines of the law, for the law in such case generally take is good in hi self, but equitie foloweth the lawe in all particuler cases wher rigth & iustice requireth, notwithstanding that general rule of the law be to the contrary: wherfore it appereth that if any law were made by mā without any such excepcio expessed or implied it wer manifestly vnreasonable & were not to be suffered, for such cases might come & he that

the sixtene Chapter. fo. 28.

that would obserue that law should breake both the law of god and the law of reason. As if a mā make a vow that he wyll neuer eate whit meat, and after it happeneth hym to come there where he can geat none other meat. In this case it beho- ueth hym to breake his auowe, for that particu- ler case is excepted secretly from his generall a- vow by this equitie oz Epikay, as it is said be- fore. Also if a law wer made in a city that no mā vnder the payn of death should open the gates of the citie before & sonne rysing yet if the Citezens before that houre flying from their enemies come to the gates of & citie, and one for sauynge of the Citezens openeth the gates before the houre ap- pointed by the law, yet he offendeth not the lawe for that case is excepted frō the said general law, by equitie as is said before: & so it appeareth that equitie rather foloweth the intent of the law, thē the wordes of the law. And I suppose that there be in likewise some like equities grouded vpon the general rules of the law of the realme. S. Ve verely, wherof one is this. There is a general prohibition in the lawes of Englande: that it shal not be lawfull to no man to enter into the frehold of another without auctoritie of the ow- ner oz of the law: but yet it is excepted from the said prohibition by the law of reason that if a mā dryue beastes by the hygh waye and the beastes happē to escape into & corne of his neighbor. And he to bring out his beastes that thei should do no hurt goth into the ground & fetteth out & beastes: there he shal iustifie that enter into the ground by the lawe. Also notwithstanding the statute

## the sixtene Chapter.

of Edward the thyrde made the .xxiii. yeaere of his reigne wherby it is ordeyned that no man vpon paine of imprisonment shoulde geue any almes to any valiaunt begger, that is wel able to labour, yet if a man mete with such a valiant begger in so cold a wether and so lyght apparell, that if he haue no clothes he shal not be able to come to any towne to haue succour, but is likely rather to dye by the way, and he therfore geueith hym apparel to saue his lyfe he shalbe excused of the said statute by such an excepcion of the law of reason as I haue spoken of. D. I know wel that as thou saist he shalbe excepted of the said statute by conscience, & ouer that, that he shal haue gret reward of god for his good dede, but I woulde wit whether the partie shal be also discharged in the commo law by such an excepcion of the law of reason or not, for though ignorance vnuincible of a statute excuse & party against god (yet as I haue heard) it excuseth not in the lawes of the realme, ne yet in Chauncery as some say although the case be so that the party to whom the forfayture is geuen may not with conscience leaue it. S. Merely by thy question thou hast put me in a great doubte: Wherfore I pray the geue me a respite therein to make the an answer, but as I suppose for & time (howbeit I wil not fully affirme it to be as I say) but it shuld seme that he should well plecte it for his discharge at the common law, because it shalbe taken that it was the intet of the makers of the statute to except suche cases, And the iudges may many times iudge after the mynd of the makers as farre as the letter may suffer



the senentene Chapter. Fo. 29

suffer and so it semeth they may in this case. And diuers other exceptions there be also from other general groundes of the law of the realm by such equities, as thou hast remembred before that wer to long to rehearse now. D. But yet I pray the shew me shortly somewhat moze of thy mynd vnder what maner, a man may be holpen in this realme by such equitie. S. I wil with good wyl shew the somewhat therein.

In what maner a man shall be holpen by equities in the lawes of England,

The .xvii. Chapter.

First it is to be vnderstād there be in many cases diuers exceptions frō the general groudes of y<sup>e</sup> law of the realm by other reasonable grouds of the same law, wherby a man shalbe holpen in the common law, as it is of this general ground, that it is not lawfull for no man to enter vpon a discent, yet for the reasonableness of the law excepteth from that ground an infant y<sup>e</sup> hath right and hath suffred such a discent and him also that maketh continual clayme and suffreth thē to enter, notwithstanding the discent. And of that exception thei shal haue auantage in the common law, and so it is likewise of diuers statutes, as of the statute wherby it is prohibite, that certayn perticuler tenants shal do no wast: yet if a lease for terme of yeaeres be made to an infant that is within yerres of discrecion, as of the age of .v. or .vi. yerres, and a stranger do wast, in this case this infant

## the ſeuentene Chapter.

Infant ſhall not be puniſhed for the waſt, for he is excepted and excuſed by the law of reaſon. And a woman couert to whom ſuch a leaſe is made after the couerture ſhalbe alſo diſcharged of waſte after her houſbandes death by a reaſonable maxime and cuſtome of the realme. And alſo for reparaciōs to be made vpon the ſame grounde, it is lawfull for ſuche particuler tenauntes to cutte downe trees vpon the ſame ground to make reparaciōs. But the cauſe there as I ſuppoſe is for that the mynd of the makers of the ſaid ſtatute ſhalbe taken to be that, that caſe ſhould be excepted. And in all theſe caſes y parties ſhall be holpe in the ſame court & by the cōmon law. And thus it appereth that ſomewhat a man may be excepted fro the rigour of a maxime of the law by another maxime of the lawe. And ſometyme fro the rigour of a ſtatute by the law of reaſon: and ſometyme by the intent of the makers of the ſtatute: but yet it is to be vnderſtād that moſt commonly: where any thing is excepted from the generall cuſtomes or maximes of the lawes of the realme. By the law of reaſon the partie muſt haue his remedye by a wyrt that is called Sub pena. If a Sub pena lye in the caſe, but where a Sub pena lieth, and where not, it is not our intent to treate of at this tyme. And in ſome caſe there is no remedye for ſuch an equitie by way of compulſion, but all remedye therein muſt be committed to the conſcience of the partie. D. But in caſe where a Sub pena lyeth to whom ſhall it be directed: whether to the iudge or to the partie. D. It ſhall neuer be directed to the iudge, but to

to the partie plaintife or to his attourney and therupon an Iniunction commaunding them by the same vnder a certayn payn therein to be con- teyned that he procede no farther at the common law, tyll it be determined in the kynges chaun- cerpe, whether the playntife hath tittle in con- science to recouer or not. And when the plain- tyfe by reason o f suche an iniunction ceaseth to aske any farther processe: the iudges will in like- wise cease to make any farther processe in that behalf.

D. Is there any mencion made in the lawes of England of any such equities. S. Of this terme equitie to þ intent that is spoken of here there is no mencion made in the lawes of Eng- land, but of an equitie deriued vpon certain sta- tutes mencion is made many tymes and often in the law of England. But that equitie is al of a- nother effect then this is, but of the effect of this equitie that we now speake of, mencion is made many tymes, for it is oft tymes argued in þ lawe of England where a Sub pena lyeth and where not: and daily billes be made by mē learned in the law of the realme to haue Sub penas. And it is not prohibite by the law, but that they may well do it so that thei make thē not, but in case where thei ought to be made and not for veracion of the partie, but accorpyng to þ trouth of the matter. And the law wyl in many cases that there shalbe such remedy in the chauncery vpo diuers thinges grounded vpon suche equities, and than the lord Chaunceller must order his conscience after the rules and groundes of the lawe of the realme,  
in

## the ſeuentene Chapter.

in ſo much that it had not been inconuenient to haue aſſygned ſuch remedy in the chauncery vpo ſuche equities for the ſeuene groundes of the law of England, but forasmuch as no record remayneth in the kynges court of no ſuch byl ne of the writ of Sub pena oz inſiſtion that is ſued therevpon: therfore it is not ſet as for a ſpecial ground of the law, but as a thyng that is ſuffered by the law. D. Then ſith the parties ought of right in many caſes to be holpen in the chauncery vpo ſuch equities. It ſemeth y if it wer ordeyned by ſtatute, that there ſhould be no remedy vpo ſuch equities in the chauncery nor in none other place, but that euery matter ſhuld be ordred only by the rules and groundes of the comon law: that that ſtatute were againſt right and conſcience. S. I thynke the ſame, but I ſuppoſe there is no ſuche ſtatute. D. There is a ſtatute of that effecte, as I haue heard ſay, wherein I woulde gladly here thy opinion. S. Shewe me that ſtatute and I ſhall with good wyll ſay as me thinketh therein.

Whether the ſtatute hereafter rehearſed by the Doctour be agaynſt conſcience oz not.

## The.xviii.Chapter.

There is a ſtatute made in the.iiii. yere of king Henry the fourth, the.xxii.Chapter. Wherby it is enacted that iugemētes geuen in the kinges courtes, ſhal not be examined in the chauncerpe, Parlia=

the eightene Chapter. fo, 31.

Parliament, nor els where, by whiche statute it appereth that if any iudgement be geuen in the kynges courtes agaynst an equitie or against any matter of conscience, that there can be had no remedy by that equitie, for the iudgement can not be resourmed without examination, and the examination is by the sayd statute prohibite: wherefore it semeth that the sayd statute as against conscience, what is thyne opinion therein. S.

If iudgementes geuen in the kynges courtes should be examined in the chauncery before the kynges counsel or in any other place, the playntifes or demaundantes should seldom come to the effect of their suit, ne the law should neuer haue ende. And therfore to eschew that inconuenience that statute was made. And though perauenture by reason of that statute, some singuler pson may happē to haue lost. Nevertheless the said statute is very necessary to eschew many great vexaciōs and iniust expences that would els come to many plaintifes that haue rightwisely recovered in the kinges courtes. And it is much more prouided for in the law of Englād that hurt nor damages should not come to many than onely to one. And also the sayd statute doth not prohibite equite, but it prohibiteth onely the examination of the iudgement for the eschewyng of the inconuenience before rehearsed. And so it semeth that the sayd statute standeth with good conscience. And in many other cases where a man doth wrong, yet he shall not be compelled by way of compulsion to resourme it, for many times it must be left to the conscience of the partie, whether he will redresse



## the eightene Chapter.

redresse it or not. And in such case he is in conscience as well bound to redresse it if he wyl saue his soule, as he wer if he wer compellable therto by the law as it may appere in diuers cases, & may be put vpon the same ground. D. I pray the put some of those cases for an example. S.

If the defendaunt wage his law in an accion of debt brought vpon a true debt the plaintife hath no meanes to come to his debt by way of compulsion, neyther by Sub pena nor other wise, and yet the defendaunt is bound in conscience to pay hym.

Also if the graund Jury in attaynt affirme a false verdict, geuen by the petty Jury there is no further remedy but the conscience of the partie. Also where there can be had no sufficient prooffe, there can be no remedy in the chancery, no more then there may be in the spiritual court. And because thou hast geue an occasion to speke of conscience, I would gladly here thy opinion where conscience shalbe ruled after the law, & where & law shalbe ruled after conscience. D. And of that matter I would likewise gladly here thy opinion, specially in cases grounded vpon the lawes of England, for I haue not heard but litle therof in tyme past, but befoze thou put any cases therof: I would that thou wouldest shew me how those two questions after thy opinion are to be vnderstande.

¶ Of what law this question is to be vnderstand: that is to saye, where conscience shall be ruled after the law.

## The.xix. Chapter.

The

**T**he law whereof mention is made in this question, that is to saye: where conscience shalbe ruled by & law, is not as me semeth to be vnderstand only of the law of reason, & of the law of god, but also of the law of man, that is not contrary to the law of reason, nor the law of God: but & it is superadded vnto the for the better ordyng of the comunō wealth, for such a law of man is alwaies to be set as a rule in conscience, so that it is not lawfull for no man to go fro it on the one syde ne on the other for suche a law of man hath not onely the strength of mans law, but also of the law of reason, or of the law of God, wherof it is dyryued for lawes made by man which haue receyued of god power to make lawes be made by God. And therfore conscience must be ordzed by that law, as it must be vpon the law of god, and vpon the law of reason. And farthermoze that law wherof mention is made in the latter ende of the Chapter next before: that is to saye, in that question wherein it is asked where the lawe is to be left and forslaken for conscience, is not to be vnderstande of the lawe of reason nor of the law of god: for tho two lawes may not be left, nor it is not to be vnderstand of the law of man that is made in particuler cases, and that is consonant to the law of reason, and to the law of god, and that yet that law shuld be left for conscience: for of such a law made by man conscience must be ruled, as it is said before. Nor it is not to be vnderstād of a law made by mā cōstaunding or prohibiting any thing to be done & is against the law of reason or the lawe of God.

For

## the nintene Chapter.

For if any law made by man, bynd any person to any thyng that is agaynst the said lawes, it is no law, but a corruption and a manifest error.

Therefore after them that be learned in  $\varphi$  lawes of England, the said questio: that is to say where the law is to be left for conscience and where not is to be vnderstand in diuers maners, and after diuers rules as hereafter shall somewhat be touched.

**I**f first many vnlearned persons beleue that it is lawfull for them to doe with good conscience althynges which yf they do them, they shall not be punished therfore by the law, though the law doth not warrant them to do that thei do, but onely when it is done doth not for some reasonable consideracion punish hym that doth it, but leaueth it onely to his conscience. And therefore many persons do oft tymes that thei should not do, and kepe as their own that, that in conscience thei ought to restore, Wherof there is in  $\varphi$  lawes of England this case.

**I**f two men haue a woode ioyntly, and the one of them selleth the woode and kepeth all the money wholly to hymself. In this case his fellow shall haue no remedy agaynst hym by the law, for as they whan they tooke the woode ioyntly put eche other in trust, and wer contented to occupy together: so the law suffreth the to order the profits therof accordyng to the trust that ech of the put other in. And yet if one take al the profits, he is bound in conscience to restore the halfe to his fellow, for as the law geueth hym ryght onely to halfe lande, so it geueth hym ryght onely in conscience

science to the halfe profit. And yet neuer thelesse it can not be saide in that case, that the lawe is agaynst conscience, for the lawe neither wylleth ne commaundeth that one should take all the profit but leaueth it to their conscience, so that no default can be found in the law, but in hym that taketh all the profit to him self may be assigned default, whyche is bounde in conscience to reforme if he wil saue his soule, though he can not be compelled therto by the law. And therfore in this case and other lyke, that opinion whyche some haue, that they maye do with conscience all & they shall not be punished, for by the lawe if they dooe it, it is to be left for conscience, but the law is not to be left for conscience.

#### ¶ Addicion.

¶ Also many men thinke that if a man haue land that another hath title to, if he & hath the ryghte shall not by the accion that is geuen hym by the lawe to recouer his ryght by: recouer damages, that then he that hath the land is also discharged of damages in conscience, and that is a greate error in conscience, for thoughe he can not be compelled to paye the damages by no mans law, yet he is compelled therto by the lawe of reason, and by the lawe of God, wherby we be bound to dooe as we would be done to, & that we shal not couet our neighbors good. And therfore if tenāt in taile be disceased & the disseisor dieth seased, & then the heire in & taile bringeth a formedō & recouereth & lād & no damages: for the law geueth him no damage in that case: yet the tenāt by cōscience is bound to paye damages to the heire in tail fro & death

## The .xix. chapter.

of his ancesster. Also it is taken by some men, that the law must be left for conscience where the lawe doth not suffer a man to deny that he hath before affirmed in courte of recorde, or for that he hath wilfullye excluded him self therof for some other cause, as if the daughter that is onely heyre to her father, will sue liuerie with her sister that is a bastard, in that case she shall not be after receiued to say that her sister is bastarde, in so much that if her sister take halfe the lande with her, there is no remedy agaynst her by y<sup>e</sup> law. And no more there is of diuersitie other estopels, which wer to longe to rehearse now. And yet the party that may take auantage of such an estoppel by the law is bound in conscience to forsake that aduantage specially if he wer so estopped by ignorance, and not by his own knowledge and assent, for though the lawe in such cases geueth no remedy to him that is estopped, yet the law iudgeth not that the other hath the ryghte vnto the thyng that is in variaunce betwixt them.

¶ Also it is vnderstande that the law is to be left for conscience, where a thyng is tried and founde by verдите agaynst the trowth, for in the common law the iudgement must be geuen accordyng as it is pleaded & tryed lyke as it is in other lawes, y<sup>e</sup> the iudgement must be geuen accordyng to that that is pleaded and proued.

¶ And it is vnderstand y<sup>e</sup> the law is to be left for conscience, where the cause of the law doth cease, for whā the cause of the law dothe cease, the lawe also dothe cease in conscience, as appeareth by this case hereafter folowpng. ¶ Addition.



**A** man maketh a lease for terme of lyfe & after a straunger dothe waste, wherfore the lesse byn- geth an action of Trens and hath iudgemēt to re- couer damages haupng regarde to the treble da- mages & he shall yelde to him in & reuerſion. And after he in the reuerſion before action of waste su- ed dieth: so & the action of waste is therby extincted then the tenant for terme of life (though he maye sue execution of the said iudgemēt by the law (yet he may not do it by conscience, for in conscience he may take no more then he is hurted by the sayde trespassse, because he is not charged ouer with the treble damages to his lessour.

Also it is vnderstande where a lawe is groun- ded vpon a presumption, for if the presumption be vnttrue, then the lawe is not to be holden in con- science. And now I haue shewed the somewhat how that question, that is to say: where the lawe shal be ruled after conscience, I prey the shew me whether there be not yke diuersities in other lawes, betwixte lawe and conscience. D. Pres- berelpe verpe many wherof thou hast recited one before, where a thinge that is vnttrue is pleaded and proued, in which case iudgement must be ge- uen accordyng as well in the lawe Ciuile, as in the lawe Canon. And an other case is that if the heyre make not his inuentyrye, he shall be bounde after the lawe Ciuile to al the dettes though the goodes amaunt not to so much. And the lawe ca- non is not agaynste that lawe, and yet in consci- ence the heyre whiche in the lawes of Englande is called an executor is not in that case charged to the detts, but accordyng to & value of the goodes.

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tory

The.xx.chapter.

And now I pray thee shew me some cases where conscience shalbe ruled after the law. S. I will with good will shewe thee somewhat as me thinketh therein.

There foloweth diuers cases where conscience is to be ordred after the lawe.

The.xx.Chapter.

THE eldest sonne shall haue and enioy his fathers landes at the common lawe in conscience, as he shal in the law. And in Burghenglysh the yonger sonne shal enioy the inheritaunce, and that in conscience. And in Gauckind al y sonnes shal inherite the land together as daughters at y common lawe and that in conscience. And there can be none other cause assigned why Conscience in the firste case is wyth the eldest brother, and in the seconde wyth the yonger brother, and in the thirde case with all the brethren. But because the lawe of Englande by reason of dyuers customes doth sometyme geue the lande wholly to the eldest sonne, sometyme to the yongest, and souetyme to all.

*liuerye* Also if a manne of his mere mocion make a feffement of two acres of lande, lyng in two seueral shyres, and maketh liuerye of season in the one acre in the name of both. In this case the feffe hath right but onely to that acre wherof liuery of season was made, because he hath no title by the lawe: but if both acres had bene in one shire he had, had good ryght to both. And in these cases y diuersitye of the lawe maketh the diuersitye of conscience.

Al:

¶ Also if a man of hys mere mocion make a fesse-  
ment of a maner and faithfully not to haue and to hold  
ec. with the appurtenaunces, in that case the fesse  
hath right to the demedie landes and to the reter  
if there be attournamete and to the common par-  
teining to the maner; but he hath nother ryght to  
the aduousons appendant if any bee; nor to the  
villeins regardant, but if this terme with thap-  
purtenaunces had bene in the dede, the fesse had  
ryght in conscience aswell to the aduousons and  
villeins, as to the residues of the maner, but if the  
kyng of his mere mocion geue a maner with the  
appurtenaunces, yet the donee hath neyther right  
in lawe nor conscience to the aduousons nor vil-  
leins. And the diuersitie of the lawe in these cases  
maketh the diuersitie of conscience.

¶ Also if a manne make a lease for terme of yerres  
peldynge to hym and to his heyres a certayn rent  
vpon condicion, that if the rent be behynde by .xl.  
dayes. ec. that then it shalbe lawfull to the lessour  
and his heyres to reentre. And after the ret is be-  
hynd the lessour asketh the rent accordyng to the  
law and it is not payed, the lessour dyeth his heire  
entreteth. In this case his enter is lawfull both in  
law and conscience: but if the lessour had dyed be-  
foze he had demaunded the rent, and his heyre de-  
maund the rent, & because it is not payed he ren-  
treteth, in that case his rentre is not lawfull nother  
in law nor in conscience.

¶ Also if the tenant in dower sow her land & dye  
before her coine be ripe, the coine in conscience be-  
logeth to her executors, & not to him in the reuer-  
sion; but otherwise it is in conscience of grasse and

*loaf w<sup>th</sup> a  
clause of  
warranty*

## The .xx. chapter.

fruites. And the diuersitye of the lawe maketh there also the diuersitie in conscience.

Also if a man seased of Landes in his demesne as of fee, bequetheth the same by hys last wyll to another and to his heires and dyeth. In this case the heyre notwithstandinge the wyll hath ryght to the lande in conscience. And the reason is because the lawe iudgeth that will to be voyde, and as it is void in the law, so is it void in conscience.

Also if a man graunte a rent for terme of yfse & make a lease of land to the same grant for terme of life, and the tenat alieneth both in fee. In this case he in the reuerſion hath good title to the land both in law and conscience and not to the rent. And the reason is because the land by the alienation is forfeit by the lawe to hym in the reuerſion and not the rent.

**A**ddicion.

Also if Landes be geuen to two men and to a woman in fee, and after one of the men entermarrieth with the woman, and alieneth the lande and dyeth. In this case the womā hath ryght but only to the third part, but if the man and the womā hath bene marped together before the firste feffement, then the woman notwithstandinge the alienation of her husbāde shoud haue had ryght in law and conscience to the one halfe of the land. And so in these two cases conscience doth folowe the lawe of the realme. Also if a manne haue two sonnes, one before spousels & another after spousels, and after the father dyeth seased of certayne landes. In that case the yonger sonne shall inuoye the Landes in this realme as heyre to hys father.  
bothe

bastard

both in law & cōscience. And the cause is because & sonne borne after spousels, is by the lawe of thys realme & very heire, & the elder sone is a bastarde. And of these cases & many other like in & lawes of England may be formed the Syllogisme of cōscience or the true iudgemēt of cōscience in this manner. Sideresis ministrereth the maior thus. Rightwisnes is to be done to euery mā, vpon which maior the law of Englād ministrereth the minor thus. The enheritaunce belongeth to the sone born after spousels, & not to the sonne borne before spousels, the cōscience maketh & cōclusion, and sayth; therfore the enheritaunce is in cōscience to be geuen to the sonne borne after spousels. And so in other cases infinite may be formed by the law the Syllogisme or the right iudgement of conscience, wherfore they that be leatned in the lawe of the realme saye that in euery case where any lawe is ordeined for the disposiciō of landes and goodes, whiche is not agaynst the lawe of God nor yet against & law of reason, & the law bindeth al them that be vnder the lawe in the court of conscience, & is to saye, inwardely in hys soule. And therfore it is somewhat to maruel that spiritual men haue not indendoured them selues in times past to haue more knowledg of & kinges lawes then they haue done, or & they yet do, for by the ignoraunce thereof they be oft tymes ignoraunte of that & shoulde order them accordyng to right and iustice, aswell concernynge them selues as other & come to them for counsayl. And now for asmuch as I haue answered to thy questios aswel as I cā: I pray thee that thou wylte shewe me thy opinion in dyuers cases



## The. xxi. chapter.

cases formed vpon the lawe of Englande wherein  
I am in doubt, what is to be holden therein in co-  
science. D. Shew me thy questions and I will  
say as me thinketh therein.

The first question of the student.

### The. xxi. Chapter.

**I**f an infant that is of the age of. xx. yeare and  
hath reason and widdome to gouerne him selfe  
selleth his lande & with the money therof bieth  
other lande of greater value then the first was, &  
taketh the profites therof, whether may that in-  
fant aske his first land agayn in conscience, as he  
maye by the lawe. D. What thynekst thou in  
that question. S. He semeth that forasmuch as  
the lawe of Englande in this article is grounded  
vpon a presumption, that is to saye, that infantes  
commonlye afore they be of the age of. xxi. yeres  
be not able to gouerne them selfe, that yet for as-  
much as that presumption sayeth in this infant  
that he may not in this case wyth conscience aske  
the land againe that he hath solde to his great a-  
uauntage as befoze appeareth. D. Is not this  
sale of the infante & the seffement made therupon  
if any were voydable in the lawe. S. Yes be-  
relpe. D. And if the seffe haue no ryghte by  
the bargayn, nor by the seffement made therupō:  
whereby shoulde he then haue ryghte thereto as  
thou thyngest. S. By conscience as me thin-  
keth for the reason that I haue made befoze. D.  
And vpon what lawe shoulde that conscience be  
groun-

grounded that thou speakest of, for it can not be grounded by the lawe of the realme, as thou hast sayd thy selfe. And me thinketh that it can not be grounded vpon the law of god, nor vpon the lawe of reason, for feoffmentes nor contractes be not grounded vpon neyther of those lawes, but vpon the lawe of man. S. After the lawe of proprietie was ordeined, the people might not conveniently liue together without contractes, and therefore it semeth that contractes be grounded vpon the lawe of reason, or at least vpon the lawe that is called *Ius gentium*. D. Though contractes be grounded vpon that Lawe that is called *Ius gentium*, because they be so necessary and so generall among all people, yet that proueth not that contractes be grounded vpon the lawe of reason: for though that law called *Ius gentium* be much necessary for the people yet it may be chainged. And therefore if it were ordeyned by statute that there should be no sale of land, ne no contract of goods. And if any wer that it should be voyde, so that euery man should continue styl sealed of his lades and possessed of his goodes, the statute wer good. And then if a man agaynst that statute solde his lande for a summe of money, yet the seller myght lawfullie retayne hys Lande accoꝝdyng to the statute. And then he were bounde to no more but to repaye the money that he receyued wth reasonable expences in that behalle, and so it lykewyse me thinketh that in thys case the infant maye wth good conseyence reenter into hys firste lande, becaule the contracte after the Maxymes of the lawe of the Realme is voyde, for  
as

## The.xxii.chapter.

as I haue heard the maximes of the law be of as great strength in the lawe as statutes. And some thinketh that in this case the infant is bounde to no more, but onely to repay the money to him that he sold his land vnto, with such reasonable costes and charges as he hath sustayned by reason of the same. But if a man sel his land by a sufficient and lawfull contracte though there lacketh lyuercy of season or kiche other solemnities of the lawe, yet the seller is bound in conscience to performe the contract, but in this case the contract is insufficient, and so me thinketh great diuersitie betwixt the cases. S. For this tyme I holde me contented with thy opinion.

## The second question of the Student.

## The.xxii.Chapter.

I If a man that hath landes for terme of life be impanelled vpon an inquest, & therupon lea-  
seth issues and dyeth, whether may those issues be  
leued vpon hym in the reuerfion in conscience as  
they may be by the law. D. If they maye be le-  
nied by the lawe, what is y cause why thou doest  
doubt whether they may be leuped by conscience.  
S. For there is a maxime in the lawes of Eng-  
lande, that where two titles runne together, the  
eldest title shalbe preferred. And in this case the  
title of hym in the reuerfion is before the tytyle of  
the forfeyture of the issues. And therefore I doubt  
somewhat whether they may be lawfully leuied.

D.

D. By that reason it semeth thou art in doubt what the lawe is in this case, but that must necessarily be knowen, for els it were in vayne to argue what conscience wyll therein. S. It is certain that the lawe is suche and so it is likewyse if the husbande forseyte issues and dye, those issues shal be leuied on the landes of the wyfe. D. And if the lawe be suche it semeth that conscience is so in likewyse, for with it is the law that for execucio of Justice euery manne shalbe impanelled when nede requireth it semeth reasonable, that if he wil not appere that he shoulde haue some punishment for his not appearance: for els the lawe shoulde be clerely frustrate in that point. And the paynt as I haue heard is that he shal leie issues to the kynge for his not appearance, wherfore it semeth not inconuenient nor against conscience though y<sup>e</sup> lawe be y<sup>e</sup> those issues shal be leuyed of hym in the reuersion, for that condicion was secretly vnderstande in the lawe to passe with y<sup>e</sup> lease when the lease was made. And therfore it is for the lessour to beware & to preuent the daunger at the makynge of the lease, or els it shalbe adiudged his own default. And than this particuler maxime wherby such issues shalbe leuied vpon him in the reuersion is a particuler excepcion in the lawe of Englande from the generall maxime y<sup>e</sup> thou hast remembred before, y<sup>e</sup> is to saye, y<sup>e</sup> where two titles run together, y<sup>e</sup> the eldest title shalbe preferred, & so in this case y<sup>e</sup> general maxime in this poynt shal holde no place, nother in law nor in conscience, for by thys particuler maxime y<sup>e</sup> strength of the general maxime is restrained to euery intet, y<sup>e</sup> is to say, as well in law as in conscience. The

The.xxiii.chapter.  
¶ The thirde question of the student.

The.xxiii.Chapter.

**I**f a tenāt for terme of life, or for terme of yerres do wast wherby they be bounde by the lawe to yelde to him in the reuerſion treble damages. And ſhall alſo forſite the place waſted, whether is he alſo bound in conſcience to pay thoſe damages, & to reſtoze the place waſted immediatlye after the waſt done, as he is in the ſingle damages, or & he is not bounde therto till the treble damages and place waſted be recovered in the kinges court.

**D.** Before iudgemente geuen of the treble damages and of the place waſted he is not bound in conſcience to pay them. For it is vncertain what he ſhould pay, but it ſuffiſeth that he be ready tyll iudgement be geuen to yelde damages accordyng to the value of the waſt, but after the iudgement geuen, he is bounde in conſcience to yelde the treble damages, and alſo the place waſted. And the ſame lawe is i al ſtatutes penal, & is to ſay, that no man is bound in conſcience to pay the penalty till it be recovered by the lawe. **S.** Whether maye he that hath offended agaynſt ſuch a ſtatute penal defend the accion and hinder the iudgement to the intent he would not paye the penalty, but onelye the ſingle damages. **D.** If the accion be taken rightwiſelye accordyng to the ſtatute and vpon a iuſte cauſe the defendaunt maye in no wyſe defende the accion, onleſſe he haue a true dilatozpe matter to pleade: whiche ſhoulde be hurtfull to him if he pleaded it not, though he be not bounde

to



to paye the penaltie tyll it be reconered.

The fourth question of  
the student.

The.xxiiii. Chapter.

**I** f a manne infesse other in certayne land vpon  
condicion that if he infesse anye other: that it  
shalbe lawfull for the fessour and his heyres to re-  
enter. &c. whether is this condicion good in colci-  
uence though it be voyde in the lawe. D. What  
is the cause why this condicion is void in the law  
S. The cause is this by the lawe it is incidente  
to euery state of fee simple, & he that hathe the e-  
state may lawfullpe by the lawe and by the gift of  
& fessour make a feoffement therof. And the whā  
& fessour restrayneth him after that he shall make  
no feffement to no man agaynste his owne former  
graunt, and also agaynst the puritie of the state of  
a fee simple, the lawe iudgeth the condicion to be  
voyde, but if the condicion hadde bene that he  
should not haue infessed such a man, or such a mā,  
that condicion hadde bene good, for yet he myght  
infesse other.

D. Thoughe the sayde condicion be agaynste  
the effecte of the state of a fee simple and also a-  
gaynste the lawe. Neuertheles it is not agaynst  
the intent that the partyes agreed vpon and that  
at the tyme of the liueray. And for as muche as  
the entente of the partye was that if the fesse in-  
fessed any man of the land, that the fessour should  
enter, and to that intēt the fesse toke the state and  
afte

The.xxiiii.chapter.

after breake the intent, it semeth that the land in conscience should returne to the feffour. S.

The intent of the partyes in the lawes of England is voyd in many cases, that is to saye, if it be not ordred accordyng to the law. And if a man of his mere mocion without any recompence intending to geue landes to an other and to his heyres make a dede vnto him, wherby he geueth him the landes to haue and to holde to him for euer intending & by that worde (for euer) the feffe shoulde haue & land to hym and to his heyres, in this case his intente is voyde, and the other shall haue the lād only for terme of life. Also if a man geue lādes to another and to his heires for terme of .xx. yeris intendyng that if the lessee dye within the terme & than hys heyres shoulde inioy the lande duryng the terme. In this case his entent is voyd, for by the lawe of the realme al chatels reall and personall shal go to the executours, and not to & heyre.

Also if a man geue landes to a manne and to hys wife, and to the thirde parson intendyng that euery of them should take the thirde part of the lande as .iii. comon parsons should, his entet id void for the husband & the wife as one parson in & law shal take onely & one half & the thirde parson the other halfe, but these cases be allway to be vnderstande where the sayde estates be made wythout any recompence. And for as muche as in thys pryncipall case, the intente of the feoffour is groundede agaynst the lawe : and that there is no recompence appointed for the feffement : me thynketh & the feffoure hath the neyther ryght to the lande by law nor cōscience, for if he should haue it by cōscience

The. xxv. chapter. Fo. 40.

ence & conscience shoulde be grounde vpon the lawe of reason and that it can not, for condicions be not grounde vpon the lawe of reason, but vpon the maximes & customes of the realme. And therefore it might be ordeyned by statute, that all condicions made vpon land shoulde be voyde. And whā a condicion is voyde by the maximes of the lawe, it is as fully voyde to euery entent as if it were made voyde by statute, & so me thynketh & in this case the fessour hath no right to the lande in lawe nor in conscience. D. I am content thy opinion stande till we shall haue hereafter a better leisure to speake farther in this matter.

The fift question of the student.

The. xxb. Chapter.

I f a fine with Proclamation be leuyed accordyng to the statute and no clayme made wythin five yerres. &c. whether is the ryght of a straunger extincted thereby in conscience, as it is in the lawe. D. Upon what consideration was that statute made. S. That the ryghte of landes and teuenientes myghte be the moze certaynelpe knowne and not to be so vncertayn as they were before that statute. Doctour. And whan anye lawe of man is made for a common wealth, or for a good peace & quietnes of the people, or for anye inconuenience or hurt to be saued from them, that lawe is good thoughe parcase it extinct the ryght of a straunger and must be kepte in the court of  
cont

## The. xxv. chapter.

conscience for as it is said before in the fourth chapter. By lawes ryghtwisely made by manne, it appereth who hath ryght to the landes & goodes, for whatsoeuer a man hath by such a law he hath it rightwiselye. And whatsoeuer he holdeth agaynst such a law he holdeth vnrighwiselye. And furthermoze as it is sayde there, all lawes made by man which be not contrary to the law of God must be obserued and kept, and that in conscience.

And he that despiseth them, despiseth GOD, and he that resisteth them, resisteth GOD, also it is to be vnderstande that possessions, and the right thereof be subiect to the lawes, so that they therfore wyth a cause reasonable may be translated and altered from one manne to an other, by the acte of the lawe. And of thys consideracion that law is grounded that by a contract made in fayres and markets, the propertye is altered excepte the propertye be to the kynge, so þ the byer paye tolle, or dooe such other thynges as is accustomed there to be dooen vpon suche contractes and that the byer knoweth not the former propertye. And in the lawe Ciuyle there is a lyke lawe that if a manne haue another mannes good with a title. iii. yere, thinkyng that he hath ryght to it, he hath the very right vnto the thing, & that was made for a law to the entent þ the propertye and right of thynges shoulde not be vncertain: and that variacion and strife shoulde not be among the people. And forasmuch as the sayde statute was ordeined to geue a certaintye of title in the landes and tenementes comprysed in the fine. It semeth that þ fine extyncted þ title of all other, as wel in con-





## the .xxvi. Chapter.

he shall make default vppon which defaulte because it is a defaulte in despyte of the court, the demaundauntes shall haue iudgemente to reconer agaynste the tenaunt in taylor, & he ouer in value against the vouche and this iudgement and recouere in value, is taken for a barre of the taile for euer, howe maye it therefore be taken, & y<sup>e</sup> lawe standeth with conscience, & as it semeth aloweth and sauoureth such farned recoveries.

**S.** If the tenaunte in taylor sell the lande for a certain summe of money as is agreed betwixte them at such a price as is commonly vsed of other landes, and for y<sup>e</sup> suretie of the sale suffreth such a recouerye as is aforesayde, what is the cause that moueth the to doubt whether y<sup>e</sup> said contract or the reconery made thereuppon: for the surety of the byar that hath truelpe payde his money for the same shoulde stande with conscience.

**D.** Two thynges cause me to doubt therein one is for that, that after our lord had geuen the land of behest to Abraham and to his seide, y<sup>e</sup> is to say to his children in possession alway to continue he sayde to Moyses as it appeareth Leuiti. xxv. the lande shall not be solde for euer, for it is myne. And than oure Lorde assigned a certaine maner howe the lande mighte bee redeemed in the yere of Iubylpe yf it were solde before: and for as muche as oure Lorde woulde that the Lande so geuen to Abraham and hys children shoulde not bee solde for euer it semeth that he doth against y<sup>e</sup> ensauple of God y<sup>e</sup> alpeneth or selleth the lande that is geuen to hym and to his children as landes entayled be geuen.

Another

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Another cause is thys: it appeareth by & commaundemente of godde & thou shalt not coueit & house of thy neyghbour. &c.

And yf & concupiscence be prohibited moze stronger the vnlawful takyng and withholding thereof is prohibyt, and forasmuche as tayled lande whan the auncestre is dead, is a thyng that of ryght is belongyng to his heyre, for that hee is heire accordyng to & gyfte, howe maye & lande with ryght or conscience bee holden from hym? S. Notwithstandyng & prohibicion of almyghtye Godde: whereby the lande that was geuen to Abraham and to hys seide myghte not bee alpyened for euer, yet landes wythin walled towynes myght lawefullye bee aliened for euer, excepte & landes of & Leuites as it appeareth in & sayde Chapiter of Leuitici. xxb. And so it appeareth & the sayde prohibicion was not generall for euerye place and that amonge the Jewes. And it appeareth also & it was geuen onely for Abraham and his chyldren, and so it was not generall to all people. And it appeareth also that it extended not but onely to the lande of promysion as it appeareth by & wordes of the sayde Chapiter, where it is sayde thus, all & region of your possession shal bee solde vnder & condicion of redempyng, whereby appereth that landes in other countreys bee not bounde to & condicyon, and as they bee not bounde to & condicion: by the same reason it foloweth & they bee not bounde to & same succession. Therefore & sayde lawe & will that & lande geuen to Abraham and to his seide shal not be sold for euer

A.ii.

bindeth

## the .xxvi. Chapter.

bindeth no lande out of the lande of promission,  
and some menne wyl saye & sythen the passio  
of our lord was promulgate and knowen it bin-  
deth not there. And to the seconde reason whiche  
is grounded vppon & commaundment of God.  
It must nedes be graunted & it is not lawefull  
to any man vnlawfullye to couet & house of hys  
neighbour & & than more stronger he maye not  
vnlawfully take it from hym: but than it remaineth  
for the yet to proue, howe in this case thys  
tayed lande that is solde by his aunccster and  
where of a reconery is had recorde in the kynges  
courte may be sayd & landes of & heire. **D.** That  
maye bee proued by the lawe of & realme, that is  
to say by & statute of Westminster & seconde the  
first chapter where it is sayde thus. **The** wyl of  
& geuer expressiue contayned in the dede of his  
gift shalbe from hencefoorth obserued, so & they  
to whom the tenementes bee so geuen shall not  
haue power to alize, but that the landes after  
theyr deathe shall remayne to the yssue oz re-  
tourne to the donoure yf the yssue fayle by the  
whiche statute it appereth euidentely & though  
they to whome & tenementes were so geuen a-  
liened them awa ye, that yet neuerthelesse they  
in lawe and conscience by reason of the sayd sta-  
tute ought to remaine to the heyres accordynge  
to the gyfte, for it is holden commonlye by all  
Doctours that the commaundementes and  
rules of the law of manne oz of a positue law  
that is lawfully made, bynde all that bee sub-  
iectes to that lawe accordynge to the mynde of  
the maker and that in the courte of conscience.

**S.**

**S.** Dooest thou thynke that yf a manne offende agaynst a statute penall that he offendeth in conscience admytte that he dooe it not of a wyllfull dysobedience for that he wyll not obey the lawe, for yf he dooe it of dysobedience I thynke he offendeth. **D.** If it bee but onely a statute that is called Populare it byndeth not in conscience to the paymente of the penaltie, tyll it bee recouered by the lawe. And than it dothe bynde in conscience, but yf a statute bee made principallie to remedye the hurte of the partye, and for that hurte it geueth a penaltie to the apptye in that case the offendoure of the statute is bound immediatelly to restore the damages to the value of the hurte as it is vppon the statute of Waste but the penaltie aboue the hurte he is not bounde to paye tyll iudgemente bee geuen as it is sayde before, but statutes by the whyche it is assigned who shall haue ryghte or propartye to these landes and tenementes, or to these goodes or cattelles yf it bee not agaynst the lawe of Godde nor agaynst the lawe of reason bynde all theym that bee subiecte to the lawe: in lawe and conscience, and suche a statute is the statute of Westmynster the seconde whereof we haue treated before, wherefoze it muste bee obserued in conscience.

**S.** But some holde that the statute of Westmynster the seconde was made of a synghalartye and presumption of many that were at the sayde parlyment for exalting & magnifyeng of their own bloude and therfoze they saye that that statute made by such a presumption bindeth not in conscience.

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**D.** It is very perilous to iudge for certayne that the sayde statute was made of suche a presumption as thou speakest of, for there be manye consideracions to proue that the sayde statute was not made of suche a presumption but rather of a very good mynde of all the parlyament, or at the leaste of the moze parte thereof, and for the common wealthe of all þe realme, and fyrste in the kynge þe whiche in þe sayde parlyamente was þe hede and mozte chiefe and principall parte of the parlyamente as he is in euerye parlyament, canne not bee noted no suche entent. For it is not necessarpe nor it was not than in vse þe landes of þe Crowne shoulde bee entayled, and in spirituall menne ne yet in certayn burgesles and Citisens of þe sayde parlyamente whiche at that tyme hadde no lande there canne bee noted no suche singularitpe, nor yet in the noble menne and gentlemenne nor suche other as were of the sayde parlyamente and hadde landes and tenementes. It is not good to iudge in certayne that they did it of suche a presumption, but it is good and expedient in this case as it is in other cases þe bee in doubt to holde þe surer waye, and that is that it was made of charitpe, to þe entente that hee nor the heires of hym to whome the lande was geuen shoulde not fall into extreme pouerty, and thereby happlye to runne into offeice against godde, and though it were true as they saye that it was not made of charitie but of presumption and singularitpe as they speake of. Neuerthelesse for as muche the statute is not agaynst the lawe of god nor agaynst þe law of reason it must be



bee obserued by all them that bee subiectes vnto that lawe. For as John Gerson sayth in þe treatise þe he entituleth in latin De vita spiritali a = nime: þe fourth icsion, and þe thirde corollary: saith þe Godde wyll that makers of lawes iudge onely of outwarde thynges and reserue secret thynges to him. And so it appeareth þe manne maye not iudge of þe inwarde intente of þe dede, but of suche thynges as bee apparaunt, and certayne it is þe it is not apparaunte þe there was anye suche corrupte intente in þe makers of þe sayde statute, howe maye it therefore bee saide that, þe lawe is good or rightwyse, þe not onely suffereth suche thynges agaynste þe statute, but also agaynste þe commaundemente of Godde. S. To þe some aunswere and saye, þe whan þe lande is solde and a recouerye is had thereuppon in þe kinges court of recorde þe it suffiseth to barre the taile in conscience, for they saye þe as þe tayle was fyrst ordeined by the lawe so they saye þe by þe lawe it is adnulled agayne. D. We thou thy selfe iudge if in þe case there bee like auctoritie in þe makynge of þe tayle as there is in þe adnullynge thereof, for it was ordained by auctoritie of parliamente, the which is alway taken for þe moste high courte in this realme befoze any other and it is adnulled by a false supposell for that, þe they þe bee named de maundauntes shoulde haue right to þe land wher in trouthe they neuer hadde right therto, whereuppon foloweth a false supposell in þe wyrt, and a false supposell in þe declaracion & a voucher to warrant by couyne of suche a parson as hath nothyng to yelde in value and thereupon by couyn

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and collusion of the parties foloweth the default of  $\S$  vouché, by the whiche default the iudgement shalbe geuen. And so al the iudgement is deriued and grounded of  $\S$  vnttrue supposel and couyn of  $\S$  parties, wherby the law of  $\S$  realme  $\S$  hath o: dayned such a writ of entre to helpe them  $\S$  haue right to landes or tenementes is defrauded, the court is deceiued, the heyre is disherited, and as it is to doubt  $\S$  byer and  $\S$  seller and their heires and assygnés haupng knowledge of the taylor be bound to restitution, & verelye I haue hard many times,  $\S$  after the law of  $\S$  realme such recoveries shoud be no barre to the heire in  $\S$  taylor, yf the lawe of the realme myght bee therein indifferently hard. **S.** I cannot see but  $\S$  after  $\S$  lawe of the realme it is a barre of the taylor, for whan  $\S$  ternaunt in taylor hath vouched to warrantye, &  $\S$  vouché hath appeared and entred into  $\S$  warranty, & after hath made default in despite of the court, wherupō iudgemēt is gēte  $\S$   $\S$  demaundant against  $\S$  tenant, & for  $\S$  ternaunt  $\S$  he shall recouer in value agatnst the vouché, if  $\S$  heyre in  $\S$  taylor shold after bring his soymedō and recouer  $\S$  landes entailed, & after  $\S$  vouché purchaseth landes, than shoud  $\S$  heire also haue execucion against him to the value of the landes entailed as heire to his auncestre  $\S$  was ternaunt in the fyrste acciō, & so he shoud haue his own landes, & also the landes recovered in value: and therfore because of  $\S$  presumption that the vouch may purchase landes after  $\S$  iudgemēt, sōe be of oppinion that it is in the lawe a good barre of the taylor.

**D.** I suppose that in that case thou haste put that

that the bouche maye barre the heire in taylor of his recovery in value because he hath recovered the first landes, Neuerthelesse I will take a respite to be aduised of that recovery in value. And yf thou can yet shew me any other consideration why the said recoveries should stande with conscience. I pray the let me here thy concept therein for the multitude of the sayd recoveries is so greate that it were greate ppyte that all they should be bounde to restitution & haue landes by suche recoveries, sythe there is none that as farre as I canne here, dysposeth them to restore.

S. Some men make an other reason to proue that the sayde recoveries should be sufficient by the lawe to auoyd the statute of west. chan and if they be sufficient therto, they be sufficient in conscience. W. What is their reason therin. S. In the.vii.yere of king Henry the.viii.the.iii.chapiter among other thynges it is enacted, that all recoverers theyr heyres and assignes maye aduowe and iustifye for rentes, scrupce, and customes by them recovered: as they agaynste whome they recovered myghte haue done. And than they saye that whan the parlyament gaue to suche recoverers auctoritie to aduowe and iustifye for suche rentes customes and seruices as they recovered, that the entent of the parlyament was that suche recoverers should haue ryghte to that: for the whiche they should aduowe or iustifye for els they saye that it should be in vayne to geue them such power, and & the parliamēt shold els be take in maner as fortifiers of wrogful title and so they say & such recoverers by reason of & sayd

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saide statute haue right by the lawe. **D.** That statute as it semeth was made onelye to geue to the recouersers a fourme to aduowe and iustifye whiche they had not befoze thoughte they had recouered vppon a good tittle. And y<sup>e</sup> cause why they hadde no foryne to aduowe or iustifye befoze the sayde statute was, for as muche as the recouersers did not by y<sup>e</sup> p<sup>r</sup>etence of they<sup>r</sup> accion affirm y<sup>e</sup> possession of hym or them agaynst whome they recouered, nor claymed not by them, but rather disafirmed and distroyed their estate. And therefore they cannot alledge any contynuaunce of their title by them, as they may y<sup>e</sup> haue rentes or seruices, or suche other of y<sup>e</sup> graunte of other by dede or by fyne. And therefore as it semeth y<sup>e</sup> mooste principall intente of y<sup>e</sup> statute was y<sup>e</sup> suche recouersers should aduowe and iustifye for rentes seruices and customes as they should or myghte doe y<sup>e</sup> had them by fine or dede not hauynge any respect as it semeth whether they recouered agaynst tenant in fee simple or in fee taile, nor whether y<sup>e</sup> recoueries wer had vpon a rightfull title. And therfoze as me semeth y<sup>e</sup> sayd statute neither affirmeth nor disafirmeth y<sup>e</sup> tittle of y<sup>e</sup> recoueries wherby they do auowe for yf a manne had right befoze y<sup>e</sup> recouerye y<sup>e</sup> ryghte shoulde remayn due to hym notwithstanding y<sup>e</sup> sayd statute and so me semeth y<sup>e</sup> the tittle of them y<sup>e</sup> haue y<sup>e</sup> landes entailed by suche recoueries is nothyng fortified nor affirmed by the sayde estatute but that they are in the same case as they were befoze: what thinkest thou therein? **S.** This matter is great, for as y<sup>e</sup> saist there be so many y<sup>e</sup> haue tailed landes

landes by suche recoueryes: & it were greate pte  
 tye and heauines to condemne so many parsones  
 and to iudge & they all were bounde to restituci-  
 on. For I thinke there be but few in this realme  
 that haue landes of any notable value but that  
 they or theyr anncestours, or somme other by  
 whome they clayme haue hadde parte thereof  
 by suche recoueryes. In so muche & Lordes  
 spyrytuall and temporall, knyghtes, Squires,  
 riche menne and poore, Monasteries, Collegies,  
 and Hospitales haue suche landes, for such re-  
 coueries haue bene vsed of longe tyme, whoo  
 maye thynke therefore withoute greate heauy-  
 nesse that so manye menne shoulde be bounde to  
 restitution, and that yet as thou sayste, no man  
 dyspsoleth hym to make restytucion. And so I  
 am in maner perplexed and wotte not what to  
 saye in thys case but that yet I trust that igno-  
 raunce maye excuse manye parsones in this be-  
 halfe. **W.** Ignoraunce of the deade maye ex-  
 cuse, but ygnoraunce of & lawe excuseth not but  
 it be inuincible, & is to saye that they haue done  
 & in them is to knowe & trouthe as to counsaile  
 with learned men: and to aske them what & lawe  
 is in & behalfe and if they aunswere them & they  
 may do this or & lawfully, than they bee thereby  
 excused in conscience, but yet in mans lawe they  
 be not therby discharged but they & haue taken  
 vpon the to haue knowledge of & law bee not ex-  
 cused by ignorance of & lawe, ne no more are they  
 & haue a wilfull ignoraunce and & woulde ra-  
 ther bee ygnoraunte than to knowe the trouthe.  
 And therefore they wyll not dyspose them to  
 aske



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aske any counsaile in it, and yf it be of a thyng y  
is againste y lawe of god, or the lawe of reason,  
no man shalbe excused by ignoraunce, and so ther  
be but fewe that be excused by ignoraunce. S.  
Whatthan shall we condemne so many & so nota-  
ble men. D. We shall not condemne the but we  
shal shew them their peryll. S. Yet I truste y  
theyr daunger is not so great that they should be  
bounde to restitution. For John Gerson saythe  
in the saide booke called *De unitate ecclesiastica*  
*consideratione secunda, quod communis error fa-*  
*cit ius:* That is to say a common errour maketh  
a right, of whiche wordes as it semeth som trust  
maye bee hadde, that though it were fullye ad-  
mitted the sayd recoueryes were fyrst had vpon  
an vnlawfull grounde and against y good order  
of conseyence y yet neuerthelesse forasmuche as  
they haue bene vled of longe tyme so that they  
haue bene taken of diuers menne that haue bene  
ryght well learned in maner as for a lawe, that  
the byers partely be excused so that they bee not  
bounde to restitution. And moreouer it is cer-  
tayne that, that statute of west. the seconde nor  
none other statute made by manne cannot bee of  
greater vertue or strengthe, than was the bonde  
of matrimonye that was ordeyned by God. And  
though that bonde of matrimonye was indissolu-  
ble: yet neuerthelesse Moyses suffred a bill of re-  
fusell of the Jewes, whiche in latyn is called *Li-*  
*bellum repudii*, and so they myghte thereby for-  
sake theyr wyues. As it appereth *Deutro. xliii.*  
and therefore lyke as a dispensacion was suffred  
against that bond, so it semeth it may be agaynst  
thys

this statute. W. As to that reason that thou  
 haste last made of a bill of refusell, let al purcha-  
 sours of land heare what our lord sayth in y<sup>e</sup> gos-  
 pell to the Jewes of that byll of refusell. Ma-  
 thew. xix. where he saith thus, to the hardnesse of  
 your heartes, Moyses suffred you to leaue your  
 wiues, for at y<sup>e</sup> beginning it was not so, of which  
 wordes Doctours hold commonly that though  
 suche a bill of refusell was lawefull so that they  
 that refused their wiues thereby, should be with-  
 out paine in the law, that yet it was neuer law-  
 full so that it should be without sinne. And so  
 lyke wyse it maye bee sayde in this case y<sup>e</sup> such re-  
 coueries be suffered for the hardenesse of y<sup>e</sup> hear-  
 tes of English mē, which desire land & possessiōs  
 with so greate gredinesse y<sup>e</sup> they cannot be with-  
 drawen from it neyther by the lawe of God nor  
 of the realme. And therefore y<sup>e</sup> riche men shoulde  
 not take y<sup>e</sup> possessions of pore mē from thē by po-  
 wer without colour of tytyle, that is to saye ei-  
 ther by open disseison, or by the onelye sale of the  
 tenaunt in taylor, and so to holde them agaynst y<sup>e</sup>  
 expresse wordes of the statute, suche recoueries  
 haue bene suffered. And though for their great  
 multitude they maye happlye bee without payne  
 as to the lawe of the realme: yet it is to feare  
 that they be not without offence as against god,  
 and as to thy other reason y<sup>e</sup> a common erroure  
 should make a right thys wordes as me semeth  
 be to be thus vnderstand, y<sup>e</sup> a custom vled against  
 y<sup>e</sup> law of man shalbee taken in some cōtreys for  
 law yf y<sup>e</sup> people bee suffred so to continue. And  
 yet some menne call suche a custome an erroure  
 because

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because that the continuance of that custome against lawe was partly an errour in the people for that that they would not obey to lawe that was made by their superiours to the contrarye of that custome: but it is to be vnderstand that the sayde recoueries though they haue bene longe vsed may not be taken to haue strength of a custome, for manye as well learned as vnlearned haue alway spoken agaynst them and yet dooe. And furthermore as I haue harde saye a custome or a prescription in this realme agaynst the statutes of the realme preuaile not in lawe. **S.** Though a custome in this realme preuaileth not against a statute as to the lawe, yet it semeth it may preuaile against a statute in conscience, for though the ignorance of a statute excuseth not in the lawe, neuerthelesse it maye excuse in conscience and so it semeth it may do of a custome. **D.** But if suche recoueries cannot be brought into a lawfull custome in the lawe, it semeth they maye not bee brought into a custome in conscience for conscience muste alwaye be grounded vppon some lawe: and in this case it cannot bee grounded vppon lawe of reason, nor vppon lawe of Godde: and therefore yf lawe of manne serue not, there is no grounde wherupon conscience in this case may be grounded, and at the begynnynge of suche recoueries they were taken to bee good because lawe shoulde warrant them to be good and not by reason of anye custome and so yf the reason of the lawe wyll not serue in the recoveryes the custome cannot helpe for an euill custome is to bee putte awaye,

waye. And therefore me seemeth that the recoveries be not withoute offence agaynste godde, though happye for their greate multytude, and that there shoulde not be as it were a subuersion of the enheritaunce of manye in thys realme as well of spirituall as temporal: they be withoute payne in the lawe of the realme: excepte suche recoveries as by the common course of the lawe be voidable in the lawe by reason of some vse or of some other specyall matter, but what payne that is I will not temerously iudge, but commyt it to the goodnesse of oure Lorde whose iudgementes be verye depe and profounde, nor I wyll not fullye affirme that they that haue landes by suche recoveries ought to be compelled to restitution, but thys semeth to me to be good counsaile that euerye manne hereafter holde that is certayne and leaue that is vncertayne and that is that he kepe himselfe from suche recoveries, and than he shall be free from all scrupulousnes of conscience in that behalfe.

S. It semeth that in this question thou ponderest greatly the said statute of Westm, & second and that thoughe it be but onelye a lawe made by manne, that yet for as muche as it is not agaynste the lawe of reason, nor & lawe of Godde, thou thynkest that it muste be holden in conscience, and ouer that as it semeth thou arte somewhat in doubte whether those recoveries be anye barre to the heire in the tale by the lawe of the realme vnlesse that he haue in value in dede vppon & voucher, and that thou wylte

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wilt thereupon take a respite or thou shewe thy full mynde therein, and in likewyse thou thyngest as I take it that those recoueries canne not bee broughte into a custome but that the longer they be suffered to continue yf they bee not good by the lawe the greater is the offence against god. And therefore thou ponderest litle that custome, but yet thou agreeest that it is good to spare the multitude of them that be past: lest a subuersion of the inheritaunce of many of this realme myghte folowe and great strife and variance also: if they should be adnulled for the tyme past: except there be any other especiall cause to auoyde them by the lawe as thou hast touched in thy laste reason but thou thinkest that it were good that from henceforth suche recoueries should be clerely prohibited and not be suffered to be had in vse as they haue bene before: and thou counsailest all menne therfore to refraine them self from suche recoueries hereafter. D. Thou takest well that I haue saide and according as I haue ment it. S. Nowe I pray the sythe I haue heard thy question of these recoueries accordynge to thy desyre that thou wouldest aunswere me to some particuler questions concernyng tyled landes, wherof thou hast at this tyme geuen vs occasion to speake. D. Shewe me those questions and I wil shewe the my minde therein with good will.

**¶** The firste question of the Student  
concernyng tyled landes.

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**I**f a disseisour make a gift in the taile to Johā at stile and Johan at stile for the redeming of the title of y<sup>e</sup> disseysye agreeth wyth hym y<sup>e</sup> he shal haue a sertayne rente out of y<sup>e</sup> same lande to him and to his heires, and for the suertye of y<sup>e</sup> rēt it is deuised y<sup>e</sup> the disseysye shal release his ryght in the lande &c, and y<sup>e</sup> suche a recouerie as wee haue spoken of before shal be had against y<sup>e</sup> sayd Johan at stile to the vse of the paymente of the sayde rente and of y<sup>e</sup> former taylor whether standeth y<sup>e</sup> recouerye well wyth conscience oz not as thou thynkst. **D.** I suppose it doth for it is made for the strengthe and suertye of the taylor which y<sup>e</sup> dysseysy myghte haue clearly defeated and auoyded if he would & therefore as I thike if the saide Johan at stile hadde graunted to y<sup>e</sup> disseysy only by hys dede a certayne rente for the releasyng of hys title y<sup>e</sup> graunte shoulde haue bounde y<sup>e</sup> heires in the taile for euer. And than if the disseysy for hys moze suertie wyl haue such a recouery as before appeareth it semeth y<sup>e</sup> recouery standeth w<sup>th</sup> good conscience.

**S.** It semeth that thy opinion is ryght good in this matter. And so it appeareth that wyth a reasonable cause some particuler recoveries mai stande both wyth lawe and conscience to barre a taylor.

**¶** The second question of the student  
concernyng taylor landes,

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G. i.

*Jonathan - answer p. 1*

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**I**f a tenant in taile suffre a recovery againste him of the landes entailed to the intente & the recoveres shal stande sealed thereof to the vse of a certaine womon whom he entendeth to take to his wife, for terme of her life, and after to & vse of the firste taile: and after he marieth the same womon, whether standeth & recovery wyth conscience thoughe other recoveries vpon bargayns and sales did not :

**D.** It semeth yes, for though the statute bee, & they to whome the tenementes be so geuen, should not haue power to aliene, but & the lādes after their death should remain to their issues or reuert to the donours if & issues failed: yet if he to whome & landes were so geuen take a wife & dieth sealed without heire of his body, and & do nout enter & woman shal recouer agaynste hym the thirde part to hold in the name of her dowrie for terme of her lyfe, though & taile bee determined and & same law is of tenant by the curtesye: & is to saye of him that happeneth to mary one & is an inheritrix of the land entailed, & they haue yssue the wife dyeth and the issue dieth, he shall hold the landes for terme of his life as ternaunt by the curtesye, notwithstandinge the wordes of & statute . Whych saye that after the death of the ternaunte in taile without issue the landes shall reuert to & donour, and I thinke the cause is because the intent of that statute shal not be taken & it entended to put awaye suche titles as the lawe shoulde geue by reason of the taile, and so it semeth that a lyke entente of the statute shall be taken for iointours, for elles the statute myghte

myght be sometime a letting of matrimony, and it is not like & the statute intended so, and therefore it semeth & by the onely dede of the tennaunte in taile a iointour may be made by the intent of & statute, though the wordes of the statute serue not expressely for it, for many times the intente of the letter shalbe take and not the bare letter, as it appeareth in the same statute where it is said that he to whom the landes be geuen shall haue no power to alien, yet the same statut is construed & neither he nor his heires of his bodye shall haue no power to alien, and soo me thinketh & suche an intente shalbe taken here for sauinge of iointours.

S. Trowthe it is & sometyme the intent of a statute shal be taken farther thā the expresse letter stretcheth, but yet there may no intent be taken agaiſt & expresse wordes of the statute, for & should be rather an interpretation of the statute than an expolcion and it cannot be reasonableye taken, but & the intent of & makers of & said statute was & the lād should remaine continually in & heires of & taile as longe as & taile endureth & there can no iointor be made neither by dede nor by recouery, but & the taile must therby be discontinued, & therfore this case of iointour is not lyke to & sayd cases of tenant in dower or tenant by & curtesye, for & title of dowrie and of tenauncye by the courtesie groweth most specially by & continuance of the possession in & heires of the taile but it is not so of ioyntours, and therefore by & onely dede of the tenat in taile ther may no iointor be lawfully made agaiſt & expresse wordes

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of the statute. And if there be any made by way  
of recouerie, than it semeth that it muste be put  
vnder the same rule as other recoueries must be  
of landes entailed.

The third question of the student  
concerning tailed landes.

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*as. H. 2. 1*  
**I**f Iohn at noke being seased of landes in fee,  
of his mere mocion make a feoffemēt of a cer-  
tain landes to the intēt that the feffes shal ther-  
of make a gift to the said Iohan at noke to haue  
to him and to his heires of hys bodre, and they  
make the gift accordyng. And after the sayd Jo-  
han at noke falleth into det, wherfore he is takē  
and put in prison, and therupon for payment of  
his dettes he selleth the same land & for suertye  
of the bier he suffreth a recovery to be had agāst  
him in such maner as before appeareth, whether  
standeth & recovery with conscience oz ~~not~~.  
**D.** I would here make a lytle digressio to aske  
the another question oz that I made aunswer to  
thine: that is to say: to fele thy mynd how that  
law by the which the body of the dettour shal be  
taken and cast into prison there to remain til he  
have payde the dette may stand with conscience,  
specialle if he haue nothing to paye it with, for  
as it semeth if he wyl relinquishe his goodes,  
whiche in some lawes is called in Latin Cedere  
bonis that he shal not be imprisoned, & that is  
to be vnderstād most specialle if he be fallen into  
pouertye

The.xxix.chapiter, fol.51.

puertye & not through his owne default. S.  
 There is no lawe in thys realme & the descen-  
 daunt may in any case Cedere bonis, and as me  
 semeth if there were such a law it should not be  
 indifferent, for as to the knowledge of him that  
 the money is owyng to & dettoure might Cede-  
 re bonis, & is to say relinquish his goodes, and  
 yet retaine to him selfe secretly great riches. And  
 therefore & lawe in such case semeth moze indif-  
 ferent and righteous that committeth such a det-  
 tour to the conscience of the plaintife to whom  
 the money is owynge than & commyteth hym  
 to the conscience of hym & is the dettoure, for in  
 the dettoure some default may be assigned, but in  
 him to whom the money is owynge maye be as-  
 signed no default. D. But if he too whome  
 the det is owynge, knoweth & the dettoure hathe  
 nothing to paye the det wyth and & he is fallen  
 into & pouertie by some casualtye. And not tho-  
 rowe his owne default doth the law of Englad  
 holde & he maye wyth good conscience keepe the  
 dettoure styll in prison tyl he be payde: S.  
 Maye verely: but it thinketh moze reasonable to  
 apoint the libertie and & iudgement of conscience  
 in & case to the det than to & dettoure, for & cause  
 before rehearsed. And than the det if he know  
 the trouthe is as thou hast sayd bounde in conse-  
 nce to let him go at libertie though he be not  
 compellable thereto by the lawe. And therefore  
 admittinge it for thys time, & the lawe of Eng-  
 lande in thys popnte is good and iuste. I  
 praye thee & thou wylt make aunswere to my  
 question.

was short  
 22 & 23 Par  
 2 & 10  
 17 & 18



## The.xxix.chapter

**D.** I wil with good will, and therefore as me semeth for as much as it appeareth that the sayd gift was made of the mere libertie and fre wyll of y<sup>e</sup> sayd Johan at noke, and wout any recompence y<sup>e</sup> therefore it can not bee otherwise taken but y<sup>e</sup> the intente of the saide Johan at noke as well at the tyme of the sayd feoffement, as at the tyme y<sup>e</sup> he receiued againe the sayd gift in y<sup>e</sup> taile was y<sup>e</sup> if he happened afterwarde to fal into pouertie, y<sup>e</sup> he might alien the saide lande to releue him w<sup>th</sup>, for howe maye it be thoughte y<sup>e</sup> a man wyll so muche ponder the wealth of his heire that he wyl forget hymselfe, and so it semeth that not onely y<sup>e</sup> saide recovery standeth with conscience, but also y<sup>e</sup> if he had made onely a feoffmēt of the land, y<sup>e</sup> feoffement should be in conscience a good barre of the taile, but if the said feoffment and gift had been made in consideracion of anye recōpēce of money or for any matrimony or such other, than y<sup>e</sup> feoffmēt of y<sup>e</sup> saide Johan at noke should not binde his heire, & if he thā suffred any recovery thereof, than y<sup>e</sup> recoverye shoulde be of lyke effect as other recoveries wherof we haue treated before, and y<sup>e</sup> which I saide it was good to fauoure rather for their multitude than for y<sup>e</sup> conscience and the same lawe is y<sup>e</sup> if the sonne and the heire of y<sup>e</sup> sayde Johan at noke in case y<sup>e</sup> the sayd giste was made without recompence alien the land for pouertie after the deathe of his father y<sup>e</sup> recovery bindeth not but as other recoveries doe, for it cannot be thought that the intent of the father was that any of hys heires in taile should for any necessitie disherite al other heires

heires in taile & shoulde come after him, but for himselfe me thinketh it is reasonable to iudge in such maner as I haue said before.

S. And though the intent of the sayd Johā at noke whan he made the saide feoffement, and whan he toke again the saide giste in taile: were that if he fill in nede that he mighte alien: yet I suppose & he maye not alien though percase for the more suerte he declared his intent to be such vpon the liueries of season: for that intente was contrary to the gyfte & he freely toke vpon him and whan any intent or condicion is declared or reserued against the state & anye man maketh or accepteth: thā such an intent or condicion is void by the lawe as by a case that hereafter foloweth wyll appeare, & is to saye if a man make a feoffement in fee vpon condycyō that the feoffe shal not aleen it to any man, that condicion is void for it is incidente to euery state of the fee symple that he that is so seased may alpen. And lyke as in a fee symple there is incidente a power too alien, soo in a state tayle there is a secrete intente vnderstande in the gyft, that no alienacion shal be made. And therefore though the intent of the said Johan at noke were that if hee sell into pouertie & he myght sell: and though he at the taking of the gift openly declared his intent to bee so: yet & intent shoulde bee voyde by the lawe as me semeth, and if it be voyde by the law, it is also void in conscience, and so the saide recouerye must be taken in thys case to be of & same effecte as recoueries of other lādes intailed be & in non other maner.

The. xxx. chapter.  
¶ The fourth question of the student  
concernyng recoveries of in-  
heritance entailed.

The. xxx. Chaptre.

If an annuities be graunted to a man to haue &  
to perceiue to the graunte an too the heires of  
hys body of the cofers of hys grauntoure. And  
after & graunt suffreth a recouerye against hym  
in a wyrt of entre by & name of a rente in dale  
of lyke summe as the annuities is of, with vou-  
chers and iudgement after & common course, &  
both parties intende & the annuities shall be re-  
couered: whether shal & recouerye binde & heire  
in the taile of his annuities.

D. What if it were a rent goinge out of land?  
What effect should the recouree be than? S.  
It shoulde be than of like effecte as if it were  
of lande. D. And so it semeth to be of thys  
annuities, for as me thinketh a rent and an annu-  
ities be of one effecte. for the one of them shal be  
payde in ready money as the other shal. S.

That is trouthe and yet there be many great di-  
uersities betwixt them in the lawe. D. I  
pray the shewe me some of tho diuersities. S.  
Parte I shall shewe thee, but I wot not whe-  
ther I ca shew the al but first thou shalt vnder-  
stand & one diuersitie is thys. Euerye rente be it  
rēt seruice, rēt charge, or rēt seke, is goynge out  
of land, but an annuities goeth not out of any lād  
but chargeth onelye the person, & is to saye the  
grauntour or hys heires & haue allez by discēt,

But an  
annuities

or the house if it be graunted by a house of religi-  
 gio to perceine of their cofers. Also of an annu-  
 itie there lyeth no accion but onely a writ of an-  
 nuittie agaynst the grauntour his heires or suc-  
 cellours, and þ writ of annuittie lyeth neuer a-  
 gainste the pernour but only agaynst the graun-  
 tour or his heires, but of a rent the same accions  
 may lye as do of land as the case requireth: & it  
 lyeth sometime of rent againste the tenaunt of þ  
 ground, and sometime agaynst the pernour of þ  
 rente, þ is to saye agaynst him þ taketh the rent  
 wrongfully, and sometime agaynst neither: as of  
 a rent seruice assise maye lye for þ Lorde agayst  
 the mesne and þ disseasour or sometime agayst þ  
 mesne only if he did also þ disseason. Also an an-  
 nuittie is neuer taken for an assise because it is  
 no freholde in the law, ne it shal not be put in e-  
 xecucion vppon a statute marchaunte, statute  
 staple ne elegit as a rent maye: And because  
 þ said writ of enter lay not in this case of this an-  
 nuittie. And þ it cannot be etended in the lawe  
 to be the same annuittie, though it be of like sum  
 with þ annuittie, ne though the parties assented  
 and ment to haue þ same annuittie recovered by  
 the said writ of enter, therfore the sayd recovery  
 is voide in lawe & conscience, but if such a reco-  
 uerpe be had of rent with a voucher ouer, thē it  
 shalbe takē to bee of like effect as recoveries of  
 landes be in suche maner as we haue treated of  
 before.

¶ The fifth question of the student  
 concerning tailed  
 landes.

The

*Annuity cannot pass in a Recovery*

## The. xxxi chapter.

### The. xxi. Chapter.

**I**f landes be geuen to a man and to his wyfe in the name of her ioyntour by the father of the husband to haue and to hold to them and to the heires of their two bodies begottē, and after thei haue issue and y husband dieth and the wyfe alieneth y land, & against the statute of. xi. h. vii suffreth a recovery therof to be had agaynst her to y vse of the bier, and after her sonne and heire apparaunte, y is heire to the taylor releaseth too the recoverers by fine and dieth hauing a brother on liue, & after y mother dyeth, who hath righte to y lande, the bier oz the brother of hym y releaseth: **D.** What is thyne opinion therein, **I** praye y shewe me. **S.** We semeth y the byer hath ryght, for by the said statute made in the. xi. yere of kinge Henry the. vii. among other thiges it is enacted y if any woman whiche hath lades of the gift of her husband, oz of the gift of any of the auncestours of the husbände, suffer any recovery thereof agaynst her by coun, y than such recovery shal be voyde, and y it shal be laweful to hym y shoulde haue the lande after the death of the woman to enter and it to holde as in hys firste ryght, prouided alwaye that y statute shal not extende where he y shoulde haue the land after the death of y woman is agreable to any such alienacion oz recoverye, so y that agrement bee of record. And for asmuch as y heire in this case agreed to y sayd recovery by fine, whiche is one of the hiest recordes in the lawe, it semeth that the byer hath right agaynst that heire y agreed and



and against all þ̄ shal be heire of þ̄ taile, & þ̄ not only by the said recouery, but also by þ̄ saide statute whereby þ̄ said recoueryc wyth assent of the of heire is affirmed.

D. Though þ̄ bier in this case haue righte during the life of the heire þ̄ released, yet neuerthelesse after his deathe his heire as it semeth maye lawfully enter, for þ̄ agrement wherof þ̄ statute speaketh must as I suppose either be had before the recouery, or els at þ̄ time of the recouery: for if a title by reason of þ̄ said statute be once deuolute to the heire in þ̄ taile, than the ryghte as it semeth cānot be extinct nor put awaye by þ̄ one-ly fine of the heire, no more than if he had died & the nexte heire to him had released to þ̄ byer by fine, in which case the release could not extincte the ryght of the taile, nor the righte of entre þ̄ is geuen by the statute, and so as me semeth bys next heire may therfore enter.

S. As I perceiue al thy doubt is' in this case because the assente of þ̄ heire was after the recouery, for if it had been at the time of þ̄ recouerie, as if the heire had been vouched to warrante in the same recouery and he had entred: and thereupon the iudgement had be geuen thou agreest wel, þ̄ recouerye should haue auoided þ̄ taile for euer.

¶ Doctoure. That is true for it is in expresse woordes of the statute, but whan the assente is after the recouerye, than me thincketh it is not soo, ne þ̄ the righte of the firste taile, whyche was reuyned by the sayde statute shall not be extincte by his fine, no more than it shall in  
other

## The. xxxi chapter.

other taylor. S. I wyll be aduised vpon the opinion in this matter, but yet one thing would I moue farther vpon this statute and þ is thys. Some say that by thys statute all other recoveries that haue ben had ouer besyde these recoveries of iointours be affirmed, for thei saye þ syth the Parliament at þ makig of this statute knew well þ manye other recoveries were than vsed and had too defeate taylor, and þ it was lyke þ they would so continue, whiche neuertheles the Parliament did not prohibit for the time to cme as it dyd the said recoverye of iointoures, þ it is therefore to suppose þ they thoughte that they should stand with lawe and conscience: but because ioyntours wer made rather for the sauing of the inheritaunce of the husbunde, than to destroy þ inheritance, they say þ the Parliamente thought & adiudged the alienacions and recoveries of such iointours to be against the law & conscience, and not the alienacion of other lades entayled, for if they had they say, þ the Parliament would haue aduoyded recoveries of tailed landes generally as well as it dyd of recoveries of iointours. D. As to that opinion I wyll aunswere the thus for thys tyme, þ though that the makers of the sayd estatute only put away recoveries of iointoures, and not other recoveries þ yet it cannot be taken therefore þ their intent was that the other recoveries should stand good & perfit, for they spake than only of ioyntours because there was no complaynt made in the Parliament at þ tyme, but agaynst the recoveries had of iointours, & therefore it semeth that they

they intended nothing concerning other recoveries, but that they should be of the same effect as they were before & no otherwys. And that wyll appeare more plainly thus, though the makers of the said estatut intended to put away and ad-  
 nul such recoveries as shoulde be made of ioyntours after a certaine day limited in the statute that yet they intended not to auoide ne affyrme such recoveries of ioyntours as were passed before y<sup>e</sup> time: & if they intended not to aduoyd ne affyrme the recoveries had of ioyntours before that tyme, than how can it be taken y<sup>e</sup> they intended to put away or affyrme other recoveries y<sup>e</sup> were passed before y<sup>e</sup> time & not of ioyntours, y<sup>e</sup> wold not affyrme ne put away recoveries passed of ioyntours before y<sup>e</sup> tyme. And so as it semeth they intended to spare the multitude of thē that were passed of bothe, and not to comforte any to take them after y<sup>e</sup> tyme. S. I am content thy opinion stand for thys tyme and I wyll aske the another question.

**¶** The sixt question of the student, concerning tailed landes.

The .xxxii. Chapter.

**I**f tenante in taylor be diseased, and dye & an auncester collateral to the heire in taylor relese with a warrantye and die, & the warrantie descendeth vpon the heire in the taylor, whether is he there

## The .xxxii. Chapter.

thereby barred in conscience, as he is in  $\bar{y}$  law.  
D. Because our principal intent at this time  
is to speake of recoveries & not of warranties:  
& also because it hath bene of long time takē for  
a principal maxime of the lawe that it should be  
a bar to  $\bar{y}$  heires as wel  $\bar{y}$  claimeth by a fee sim-  
ple as by a state taylor, and for  $\bar{y}$  also  $\bar{y}$  it was not  
put away by  $\bar{y}$  said statute of westm̄ the secōd  
which ordayned  $\bar{y}$  taylor I wyl not at this time  
make the an answer therin, but wil take a res-  
pite to be aduised.

S. Thē I pray the yet or we depart shewe me  
what was the mooste principall cause  $\bar{y}$  moued  
the to moue this question of recoveries had of  
tailed landes. D. This moued me therto, I  
haue perceiued many tymes  $\bar{y}$  there be many di-  
uers opinions of those recoveries, whether they  
stande wyth conscience or not, &  $\bar{y}$  it is to doute  
 $\bar{y}$  manye persons ren into offence of conscience  
thereby. And therefore I thought to sele thy mid  
in theym whether I coulde perceiue  $\bar{y}$  it were  
clere,  $\bar{y}$  they serued to breake the taile in lawe  
and conscience, or  $\bar{y}$  it were clerly againste con-  
science so to breake the taile, or  $\bar{y}$  it were a mat-  
ter in doubte, & if it appered a matter in doubt,  
or  $\bar{y}$  it appeared  $\bar{y}$  the matter were vsed clerly  
against conscience, than I thoughte to do some-  
what to make the matter appeare as it is to the  
intente:  $\bar{y}$  thei that haue the rule and the charge  
ouer the people as well the spirituall menne as  
temporal men, should the rather endeouour them  
to see it reformed for the common wealth of  
the people, as well in bodye as in soule. For  
whan

Whan any thyng is vsed to the dyspleasure of God, it hurteth not onely the body but also the soule. And temporal rulers haue not onely cure of the bodies, but also of the soules, & shal answer for them if they perishe in their default: & because it semeth by the more apparāt reason & the tailles be not broken ne fully auouided by & said recoveries, and & yet ne ertheles the great multitude of them & be passed is ryght muche to be pondered. Therfore it wer very good to prohibite them for time to come, to put awaye suche ambiguities and doubtes as tyme nowe by occasion of the said recoveries, and so they be but as snares to deceiue the people, and so wyll they be as longe as they be suffered to continuē. And me thinketh verely & it were therefore right expedient & tayed landes should from henceforth eyther be made so stronge in the law & the taylor shoulde not bee broken by recoverye, fyne wyth proclamacion collaterall warrantye nor otherwise, or els & all tailles shoulde be made fee simple, so & euery man that list to sel his land might sell it by his bare froffementē and wythout anye scruple or grudg of conscience: and than there should not be so great expenses in the law nor so great variance among & people: ne yet so gret offence of cōsciēce as there is now in many p̄sons.

S. Merely me thinketh & thy opinion is right good & charitable in this behalf. And & & rulers be bound in conscience to loke wel vpon it to se it reformed & brought into good order. And verily by & thou hast said therein & haste brought me into remembraunce & there be diuers like snares concerning



## The. xxxii. Chapter.

concerning spirituall matters suffered amonge & people wherby I doute & many spiritual rulers be in great offence agaynste God. As it is of & point & the spirituall mē haue spoken so muche of, & priestes should not be put to aunswere before lay mē specialllyc of felonies & murders, & of the statute of. xlv. E. iu. & .iii. chapter. wher it is said & a prohibicio shal lye, where a man is sued in the spiritual courte for tith of wode, & is aboue the age of. xx. yere, by the name of Silua cedua as it hath done before, & thei haue in open Sermons & in diuers other opē communicacons & con- sailles caused it to be opēly notified and knowē & they shoulde be al accursed & put priestes to answer, or & maintaine the saide estatute, or any o- ther like to it. And after whan they haue ryght well perceiued & notwithstandinge all & they haue doone therein, it hath been vsed in the same pointes throughe al the realme in lyke maner as it was before. Then they haue set stil & let the matter passe, & so whan they haue broughte ma- ny persons in geat daunger, but most speciallie thē & haue geuen credence to their sayng, & yet by reason of & old custom haue done as they dyd before, thā there thei left thē, but verely it is to feare & there is to them selfe ryght great offence thereby, & is for to say to se so manye in so great daunger as they saye they bee. And to doo no more to bring them out of it than thei haue done for if it be true as they say, thei ought to stick to it with effect in al charitie til it were reformed, And if it be not as they saye than thei haue cau- sed manye too offende that haue geuen credence

## The,xxxii.chapter. Fo,56:

to them and yet contrarpe to their owne consci-  
ence doe as they did before, and þ percase should  
not haue offended if such saynges had not bene.  
And so it semeth that they haue in these matters  
done eyther to muche or to little.

And I beseeche almighty God that some good  
man maye so call vpon all these matters that we  
haue nowe comuned of, so that they that be in  
auctoritie may somewhat ponder the, and to or-  
der them in such maner that offence of cōscience  
growe not so lightly thereby hereafter as it hath  
done in tyme past. And verely he that on the  
crosse knew the price of mannes soules will here-  
after aske a right straight accompt of rulers for  
euery soule that is vnder them and that shal pe-  
rishe through their default.

### Addicion.

**T**Hus haue I shewed vnto thee in this little  
Dialogue how the law of England is groun-  
ded vpon the lawe of Reason, the lawe of God,  
the generall customes of the realme, and vpon  
certain principles that be called maximes, vpon  
the perticuler customes vsed in diuers Cities  
and countries, & vpon statutes which haue bene  
made in diuers parliametes by our soueraigne  
lorde the kyng and hys progenitours, and by the  
lordes spirituall and temporall and all the com-  
mons of the realme. And I haue also shewed thee  
in the ix. Chap. of this booke vnder what maner  
the sayde generall customes and maximes of the  
lawe maye be proued and affirmed if they were  
denied

## The. xxxii. chapter.

denied, and diuers other thinges be contained in this present Dialogue, which wyll appere in the table, that is in the latter ende of the boke as to the readers will appeare. And in the ende of the saide dialogue, I haue at thy desire shewed thee my conceyt concernyng recouerys of tayled landes & thou hast vpon the sayd recoueryes shewed me thyne opinion. And I besech our lorde set them shortely in a good clere waye, for surelye it will be right expedient for the well orderynge of conscience in many parsons that they be so.

And thus the God of peace and loue  
be alwaye wyth vs.

Amen.

The Prologue. Fo, 57:



Ere endeth the fyrste Dialogue in Englyshe, wyth newe Addicions betwixt a Doctoure of Diuinitie, & a student in the lawes of England. And hereafter foloweth the seconde In the beginnyng of whiche Dialogue the doctour aunswereth to certayne questions, whiche the Studente made to the Doctoure befoze the makynge of this dyalogues concernynge the lawes of Englande and conscience, as appereth in a dialogue made betwene them in Latine the. xxiiii. Chapter. And he aunswereth also to diuers other questions that the student maketh to him in this dialogue of the lawe of Englande and conscience. And in diuers other Chapters of this present Dialogue is touched shortlye howe the lawes of Englande are to be obserued & kept in this realme as to temporall thynges as well in lawe as in conscience befoze any other lawes. And in some of the Chapters therof is also touched that spirituall Iudges in diuers cases be bounde to geue their iudgementes accordyng to the kynges lawe. And in the latter ende of the booke the Doctour moueth dyuers cases concerning the lawes of England, wherein he doubteth howe they maye stande wyth Conscience, wherunto the Student maketh answer in such maner as to the reader wyll appere.

H. ii.

In

## The Introduction.



In the latter ende of our firste Dialogue in latine, I put diuers cases grounded vpon the lawes of england wherin I doubted and yet do, what is to be holden therein in conscience. But for as muche as the tyme was than farre past, I shewed thee that I would not desire thee to make answer to the forthwith at tyme but at some better leiser: wherunto thou saydest thou wouldest not onely shew thine opinion in tho cases, but also in suche other cases as I would put. Wherfore I pray thee nowe (for as muche as me thinketh thou haste good leiser) & thou wilt shew me thyne opinion therein. D. I wil with good wil accomplissh thy desire: but I woulde & whan I am in doubt what the law of this realme is in suche cases as thou shalt put, & thou wilt shewe me what the lawe is therein: for though I haue by occasion of our first dialogue in latin learned many thinges of & lawes of this realme whych I knew not before: yet neuertheless there be many moe thinges & I am yet ignorant in, and & parauenture in these selfe cases that thou hast put, and entēdest hereafter to put and as I sayde in the firste Dialogue in latin & xx. Chap. to searche conscience vpon any case of the law it is in vayne, but where the lawe in the same case is partly known. S. I will with good wil do as thou saiest, & I entend to put diuers of the same questions & be in the laste chap. of & said dialogue in latin, & sometime I entend to alter some of the, & to adde some newe questions to the, as I shall be most in doubt of.

D.



## The Introduction, Fol. 58.

**D.** I pray thee do as thou sayest & I shall with good will either make answer to the forthwith as wel as I can, or shal take lenger respite to be aduised, or els parauenture agre to thine opinion therin, as I shal see cause. But first I would gladly know the cause why thou haste begonne this Dialogue in the Englishe tonge, and not in the latine tonge, as the first cases that thou desiredst to know mine opinion be in, or in frenche as the substaunce of the lawe is. **S.** The cause is thys. It is ryght necessary to all men in thys Realme, bothe spirituall and temporall for the good orderynge of their conscience to knowe many thynges of the lawe of Englande that they be ignozant in. And though it had ben more pleasant to them & be learned in & latin tonge to haue had it in latin rather than in English: yet neuertheless for as muche as manye can reade Englyshe that vnderstand no latine, and some that cannot read Englishe: by hearpyng it red may learne diuers thynges by it that they should not haue learned if it were in latine. Therfore for the profite of the multitude it is put into the English tonge rather then into the latin or frenche tonge. For if it had ben in frech: few should haue vnderstand it, but they that be learned in the lawe, and they haue least nede of it, for as much as they knowe the Lawe in the same cases wythout it, and can better declare what conscience wyll thereupon than they that knowe not the lawe nothyng at all. To them therefore that be not learned in the law of the realme this treatise is specially made for thou knowest well by such studies thou hast

## The.i.chapter.

taken to some knowledge of & law of the realme that is to them most expedient. D. It is true that thou sayest and therfore I pray thee now proceede to thy questions.

### The first question of the Student.

#### The first Chapter.

*I f* tenant in tayle after possibilitie of issue ex-  
tingt do wast whether doth he therby offed in  
cōscience though he be not punishable of wast by  
the law. D. Is the law ciere & he is not punish-  
able for the waste? S. Ye verely. D. And what  
is the lawe of tenauntes for terme of lyfe, or for  
terme of yeres if they do wast? S. They be pu-  
nishable of waste by & statute & shal yelde treble  
damages, but at the cōmon law before & statute  
thei were not punishable. D. But whether thin-  
kest thou & before the statute they myghte haue  
done waste with cōscience because they were not  
punishable by the law? S. I thinke not for as  
I take it: the doing of the waste of such particu-  
ler tenantes for terme of lyfe, for terme of yeres  
or of tenantes in dower, or by the curtesy: is pro-  
hibite by the lawe of reason, for it semeth of rea-  
son & whan such leases be made, or that suche ti-  
ties in dower or by the curtesye be geuen by the  
law that there is onely geuen vnto them the an-  
nuall profites of the Lande and not the houses  
& trees and the grauell to digge and cary away,  
wherby the whole profite of the in the reuerfion,  
should

be punishable  
for waste  
by stat

and not  
the houses  
& trees

should be taken awaye for euer. And therfore at the cōmon law for wast done by tenāt i dower or tenant by & curtesy there was punishemēt or deined by the law by a prohibition of waste wherby they shoulde haue yelded damages to the value of & waste. But against tenāt for terme of lyfe or for term of yerres lay no such phibicion, for there was no maxime in the law therin against thē as there was against the other. And I thinke the cause was forasmuch as it was iudged a folpe in the lessour that made such a lease for terme of life or for terme of yerres: that at that time of the lesse he did not prohibite them that they shoulde not do waste, and sith he did not prouide no remedye for him selfe, the law would none prouide.

But yet I thinke not that the entent of the law was & they might lawfully and with good cōscience do waste, but agaynst tenautes in dower & by the curtesy the lawe prouided remedye for thei had their title by the lawe.

And verely me thinketh & thys tenant in taylor as to doyng of wast, should be like to a tenaunt for terme of life, for he shall haue the Lande no longer then for terme of hys lyfe, no more than a tenaunte for terme of life shall, and the waste of this tenaunt is as greate hurte to hym in the reuercion or the remaynder, as is the waste of a tenaunt for terme of lyfe, and if he alpyene, the donoure shall enter for the forfayture as he shall vpon the alienacion of a tenaunt for terme of life and if he make defaulte in a Recipe quod red-dat the donoure shall be recepued as he shall be vpon the defaulte of a tenaunte for terme of lyfe

## The second boke

& therfore me thinketh he shal also be punishable  
of waste, as tenant for terme of life shal. **S.**  
If he alien, the donour shal enter as thou saiest  
because the alienacion is to his disheritaunce, &  
therfore it is a forfapture of hys estate: and **¶** is  
by an aunciente Maxime of the Lawe that ge-  
ueth that forfapture in that selfe case, and if he  
make default in a **Preſt** of reddat: he in the reuer-  
tio, as thou saiest shalbereceined, but that is by  
**¶** statute of westm. ii. for at the comon law there  
was no such reſceit, and as for the statute **¶** ge-  
tieth the accio of wast against a tenant for terme  
of life & for terme of yerres it is a statute penall &  
shal not be taken by equitie, & so there is no re-  
medy geuen against him, neither by comon lawe  
nor by statute, as there is against tenat for terme  
of lyfe, and therfore he is unpunishable of waste  
by the Lawe. **D.** And thoughe he be unpun-  
ishable of waste by the lawe: yet neuerthelesse  
me thinketh he maye not by conscience doe that  
that shall be hurtfull to the enheritaunce after  
his tyme, lithe he hathe the lande but for terme  
of his lyfe no more then a tenaunte for terme of  
lyfe maye, for then he shoulde doe as he woulde  
not be doone vnto, for thou agreeſt thy selfe that  
thoughe a tenaunt for terme of lyfe was not pu-  
nishable of Waste before the statute, that yet the  
lawe iudged not that he myghte ryghtfully and  
wyth good conscience do waste. And therfore  
at thys daie if a feffement be made to the vse of a  
man for terme of lyfe, though there lye no accion  
agaynſt hym for waste, yet he offendeth con-  
science if he dooe waste, as the tenaunt for terme  
of

The.i.chapter. Fol.60.

of lyfe dyd afore the statute, whan no remedy lay  
agaynste hym by the lawe. **S.** That is  
true but there is greate diuersitie betwene thys  
tenaunt end a tenaunt for terme of lyfe: for thys  
tenaunt hath good auctoritie by the donour to  
do waste, and so hath not the tenant for terme of  
lyfe, as it is sayde before. For the estate of a  
tenant in tayle after possibilitie of issue extincte  
is in this maner, whē lands be geuen to a man &  
to his wife, and to y<sup>e</sup> heires of their two bodyes  
begotten, and after the one of them dyeth w<sup>o</sup>ut  
heires of their bodyes begotten, thē he or shee y<sup>e</sup>  
ouerliueth is called tenat in taile after possibilitie  
of issue extict, because there cā neuer bi no pos  
sibilitie be anpe heire that may enherite by force  
of that gyft. And thus it appereth y<sup>e</sup> the donees  
at the tyme of the gifte, recepued of the donours  
estate of enheritance, which by possibilitie might  
haue continued for euer, wherby they hadde po  
wer to cut downe Trees and to dooe all thyng  
that is wast, as tenaunt in fee simple myght, and  
that auctoritie was as stronge in the lawe as if  
the lessoure that maketh a lease for terme of life  
say by expresse wordes in the lease that the lesse  
shal not be punishable of waste. And therfore if  
the donour in this case had graited to y<sup>e</sup> donees  
that they should not be punishable of wast, that  
graūt had ben void because it was enclued in  
the gyft before, as it should be vpon a gyft in fee  
simple: & so forasmuch as by the first gyft & by the  
liuere of season made vpon the same: the donees  
had auctoritie by the donour to do wast. Ther  
fore though the one of that donees be now dead  
with=



## The.i.chapter.

without issue, so that it is certayne that after the  
death of the other, the lande shall reuerter to the  
donour, yet the auctorite that they had by the  
donour to do wast, cōtinueth as long as the gift  
and § liuerie of seaso made vpon the same conti-  
nueth: and I take this to be § reason why he shal  
not haue in aide as tenāt for terme of life shall, §  
is to saie, for that he can not aske healpe of that  
maxime, wherby it is ordeyned that a tenant for  
terme of life shal haue in ayde, for he can non say  
but that he toke a greater estate by the liuerie  
of season § was made to him, which yet continu-  
eth than for terme of lyfe, & so I thynke him not  
bounde to make any restituciō to him in § reuer-  
ciō in this case for § wast. D. Is thy mind only  
to proue § thys tenaunt is not bounde to make  
restitution to him in the reuercion for the wast:  
or that thou thinkest that he may with clere con-  
science do al maner of wast: S. I. intēd to proue  
no more but that he is not bounde to restitution  
to him in the reuercion. D. Chan I wyll right  
well agree to thine opinion for the reason that  
thou hast made, but if thy mynd had ben. to haue  
pued § he might with clere cōscience haue done  
al maner of wast. I would haue thought the cō-  
trary thereto, and that the tenaunt in fee simple  
maye not do all maner of waste and destruccion  
with Conscience, as to pull downe houses and  
make pastures of Cities and townes or to dooe  
suche other actes whiche be agaynst the com-  
mon wealthe. And therefore some wyll saie  
that tenaunte in fee symple maye not, wyth  
conscience destroye hys woodes and coale pyt-  
tes

The.ii.chapter. Fol.61.

tes wherby a whole contrey for their mony haue had fuel. And yet though he do so he is not bound by conscience to make restitution to no person in certayne. But now I pray thee or thou procede to the second case: that thou wilt somewhat shew me what thou meaned whē thou saiest: at y<sup>e</sup> common law it was thus or thus I vnderstād not fully what thou meanest by that terme at the common lawe. S. I shall with good wyl shewe thee what I meane therby.

¶ What is mente by this terme whan it is sayde thus it was at the common law.

The seconde Chapter.

THE common Lawe is taken three maner of ways. Firste it is taken as the lawe of thys realme of Englande discepuered from all other lawes, and vnder this maner taken. It is often tymes argued in the lawes of Englande what matters oughte of right to be determined by the comon law & what by the admiralles court or by y<sup>e</sup> spiritual court, & also if an obligaciō bear date out of y<sup>e</sup> realme as in Spaine, Fraunce, or such other. It is layed in the lawe and trowthe it is y<sup>e</sup> they be not pledable at y<sup>e</sup> comon law. Secondly, the comon lawe is taken as the kynges courtes of his benche or of the common place, and it is so taken whan a ple is remoued oute of auncien demeane for that the Lande is francke fee and pledable at the common lawe, that is to saye in the kynges court and not in auncien demeane. And

## The second boke

3 And vnder this maner taken, it is oftentimes pleaded also in base courtes, as in courtes Barons, the county and the court of Pyppouers & such other this mater oz that. &c. ought not to be determined in that court but at the comon lawe that is to say in the kinges courtes. &c. Thirde, by the comon lawe is vnderstande suche thinges as were lawe before anye statute made in that point that is in questiō: so y that point was holden for Lawe by the generall oz particuler customes and Maxymes of the realme oz by the law of reason and the law of god: no other lawe added to them by statute nor otherwys as in the case before rehearsed in the firste Chapter where it is sayde that at the comon law tenaunt by the curtesye and tenaunt in dower were punishable of waste, that is to saye, that before any statute of waste made they were punishable of waste by the grounde and Maximes of the lawe vled before the statute made in that poynte, but tenaunt for terme of lyfe ne for terme of yeares were not punishable by the sayde groundes and maximes tyll by the statute, remedye was geuen agaynst the: and therfore it is sayde that at the comon law they were not punishable of waste.

D. I praye thee now procede vnto the second question.

The second question of the student.

The.iii. Chapter.

I f a man be outlawed & neuer had knowlege of the sute, whether may the king take al his goodes & retayne them in cōscience as he may by the lawe. D What is the reason why they be forsayted by the law in that case? S. The very reason is for þ it is an olde custome and an olde Maxime in the Lawe, that he that is outlawed shall forfeit his goodes to the kinge, & the cause why þ Maxime began was thys, whan a man had done a trespase to other or an other offence wherfore procelle of outlagary lay, and he þ the offence was doone to hadde taken an accion agaynst hym accordynge to the lawe, if he hadde absented hym selfe and hadde hadde no Landes, there hadde bene no remedye agaynst hym: for after the lawe of Englande no manne shall be condemned without answer, or that he appeare and wyl not aunswere, excepte it be by reason of anye statute. Therefore for the punyshement of suche offendours as wyl not appeare to make aunswere and to be iustified in the kinges courte, it hathe bene vsed wythout tyme of mynde, that an attachement in that case shoulde bee dyrected agaynst hym retournable into the Kynges benche, or the common place, and if it were returned therupon that he hadde nought wherby he myght be attached, that then should goe forth a Capias to take hys parson, and after an alias Capias, & then a Pluries: and if it were returned vpon euerye of the sayde Capias that he coude not be founde and he appered not then should an exigent be directed agaynst hym, whiche shoulde haue so longe daye of retourne, that

### The.iii.chapter.

that five countyes myght be holdē before the re-  
turne therof and in euery of the sayde five coun-  
ties the defendaunt to be solemnely called: and if  
he appeared not, then for his cōtumacy & disobe-  
dience of the lawe, the coroners to geue iudge-  
mente that he shalbe outlawed, wherby he shall  
forfeit his goodes to the kyng and lese diuers o-  
ther aduantages in the lawe & neadeth not here  
to be remembred now. And so because he was in  
this case called accordyng to the lawe & appered  
not: that semeth that the kyng hath good title to  
the goods both in lawe and conscience.

D. If he had knowledg of the sute in very  
dede it semeth the king hath good title in consci-  
ence as thou sayest. But if he had no knowledg  
therof: it semeth not so, for the default that is ad-  
iudged in hym ( as it appeareth by thyn owne  
reason ) is his contumacye and disobedience of  
the lawe: and if he were ignoraunt of the sute,  
then can there be assigned to hym no disobedience  
for a disobedience impliyeth a knowledg of that  
he shoulde haue obeyed vnto. S.

It semeth in this case that he should be compell-  
ed to take knoweledge of the sute at his parell,  
for lithe he hath attempted to offend the lawe: it  
semeth reason that he shall be compelled to take  
hede what the lawe wil do agaynst hym for it, &  
not cneipe that: but that he shoulde rather offer  
amendes for his trespasse than for to tary tyll he  
were sued for it. And so it semeth the ignoraunce  
of the sute is of hys owne faulte, speciallye  
lith in the law is set such ordze that euery manne  
may know if he will what sute is taken agaynst  
hym



him, & may se the recordes therof whan he will & so it semeth & neyther the party nor that lawe be not bounde to geue him no knowlege therin. And ouer this I would somewhat moue further i this mat thus. That though the accio were vntrue & the defendant not gyltpe, that yet the goodes be forsafted to the kinge for his not appearaunce in lawe & also in conscience, and that for thys cause the kyng as souerayne, and head of the lawe is bounden of iustice to graunt such writs & suche processe as be appoynted in the lawe to euerye person & wyll complayne: be hys surmyse true or false, and therupon the kyng (of iustice) oweth as well to make processe to bryng the defendant to aunswere when he is not gyltpe as whan he is gyltpe and than when there is a maxyme in the lawe, that yf a manne be outlawed in suche maner as befoze appeareth that he shall forsaite al his goodes the to kyng, and maketh no excep- cyon whether the accyon be true or vntrue, it semeth & the sayde Maxyme more regardeth the generall ministration of Iustice than the parti- cular right of the party, & therfore the propartye by the outlawry & by the sayd maxyme ordeined for ministraciō of iustice is altered & is geue to & king as befoze appereth and & both in law & con- sciēce as wyl as if the accion wer true. And than the party that is so outlawed is driue to sue for his remedye against him that hath so caused him to be outlawed vpon an vntrue accion. D.

If he haue not sufficiente to make recompence or dye befoze recouery can be hadde, what reme- dpe is hadde then. S. I thynke no remedye  
and

## The second boke

and for a further declaracion in this case & i such other lyke cases where the proprietye of goodes maye be altered withoute assente of the owner it is to consider that the proprietye of goodes be not geuen to the owners directlye by the lawe of reason nor by the lawe of God, but by the lawe of man, and is suffred by the lawe of reason and by the lawe of god so to be. For at the begynnyng al goodes were in common, but after they were brought by the lawe of man into a certayne propriety so that euery man might know his owne, and than whan suche proprietye is geuen by the lawe of man, & same lawe may assigne such condicions vpon the proprietye as it listeth, so they be not agaynst the lawe of God ne the lawe of reason, and maye lawfully take away that it geueth and appoint how longe the proprietye shall continue. And one condicion that goeth with euery propriety in thys realme is if he & hath the propriety be outlawed accordyng to such processe as is ordeined by the lawe, that he shall forfayt the propriety vnto the kinge, and diuers other cases there be also, wherby proprietye in goodes shalbe altered in the lawe and the ryghte in landes also without assente of the owner, wherof I shal shortlye touch some without sayng any auctoritie therin, for the more shortnes. First by a sale in open market the proprietye is altered. Also goodes stollen and sealed for the kyng or weired be forfalte oneles appel or enditement be sued. Also straves if they be proclaimed & be not reclaimed by the owner within & yere, be forfalte & also a deadand is forfait to who so euer the proprietye

Maye

And

party was before, (except it belöged to þe kinge)  
þe shalbe disposed for the soule of him that was  
slaine therewith: and a fine with anonclayme at  
the common lawe was a barre if claime were  
not made within a yere as it is now by statute,  
if the claime be not made *¶* in. v. yeres. And all  
these forfaitures were ordeined by the lawe vpon  
certeine considerations whyche I omit at  
this tyme, but certeyne it is þe none of them was  
made vpon a better consideracion than this for-  
faiture of outlagary was. For if no especial pu-  
nishment shoulde haue been ordeyned for offen-  
ders þe would absente them selfe and not appeare  
whan they were sued in the kinges courtes, ma-  
ny sutes in þe kinges courtes shoulde haue been  
of smale effecte. And sith this Maxime was or-  
deined for the execucion of Justice and as much  
done therein by the common lawe as policie of  
man could resonably deuise to make the partye  
haue knowledge of the sute, and nowe is added  
thereto by the statute made the sixt yere of king  
Henry the eyght that a writte of proclamacyon  
shalbe sued if the partye be dwelling in another  
shire, it semeth that such rule as is geuen to the  
kinge thereby is good in conscience especialle  
seenge þe king is bounden to make processe  
vpon the surmise of the playntife and maye not  
examine but by the plec of the partye whether  
the surmise be true or not. But if the partye be  
retourned. v. times called, wher in dede he was  
neuer called (as in the seconde case of the laste  
Chapter of the sayde dialogue in latine is cōtei-  
ned) thā it semeth the partye shall haue good re-

## the iiii. chapter

medy by pcticion to the kyng, specially if he that made the returne be not sufficient to make recompence or dye before recovery can be had. **W.**

**N**ow sith I haue hard thine opiniō in this case wherby it appeareth that many thinges must be sene or a ful and a plain declaraciō cā be made in this behalfe, and secnge also ꝑ the plain answer to this case shall geue a greate light to diuers other cases that maye come by such forfaiture. I pray the geue me a farther respit or that I shew the my ful opinion therein, and hereafter I shall ryght glably do it. And therfore I praye ꝑ procede nowre to some other case.

**¶ The third question of the student.**

## **¶ The.iiii. Chapter**

**I**f a straunger do wast in landes that another holdeth for terme of lyfe wythout assent of the tenaunt for terme of life: whether maye he in the reuercion recover treble damages and the place wasted against the tenaunt for terme of lyfe according to the statute in conscience as he may by the law: if the stranger be not sufficient to make recompence for the wast done. **W.** Is the law clere in this case ꝑ he in the reuercion shal recover against the tenaunt for terme of life though he assented not to the doying of wast? **S.** We verily, and yet if the tenaunt for terme of life had ben bounde in an obligacion in a certain sum of money that he shoulde do no wast: he shuld not forfeit his bond by the wast of a straunger, and the

the diuerſitie in this. It hath beene vſed as an  
 aũciēt maxime in the law & tenant by the curteſy  
 and tenant in dower ſhould take the land wyth  
 thys charge, & is to ſay, that they ſhoulde do no  
 waſt themſelf ne ſuffer none to be done, & whan  
 an accion of waſt was geuen after againſte a te-  
 nant for terme of lyfe, than was he taken to bee  
 in the ſame caſe as to & point of waſt as tenant  
 by the curteſy and tenant in dower was, that is  
 to ſay, that he ſhould do no waſt nor ſuffer none  
 to be done, for there is another maxime in & law  
 of Englande that al caſes lyke vnto other caſes  
ſhalbe iudged after the ſame law as the other ca  
ſes be, and liſh no reaſon of diuerſitie can bee al-  
 lygned why the tenant for terme of lyfe after an  
 accion of waſt was geuen againſt hym, ſhoulde  
 haue any more fauour in the law than the tenāt  
 by & curteſy or tenant in dower ſhould, therfore  
 he is put vnder the ſame maxime as they be, &  
 is to ſay, that he ſhal do no waſt ne ſuffer non to  
 be done, & ſo it ſemieth that the lawe in this caſe  
 doth not conſider the abilitie of the perſon that  
 doth the waſt whether he be able to make recō-  
 pence for the waſt or not. But the aſſent of the  
 ſaid tenants wherby thei haue wilfully taken  
 vpon them the charge to ſe that no waſt ſhall be  
 done. D. I haue hard that if houſes of theſe  
tenātes be deſtroied w̄ ſodaine tempeſt or with  
ſtraunge enimies & they ſhal not be charged w̄  
waſt. S. Trough it is. D. And I think  
 & reaſo is becauſe thei cā haue no recovery ouer.  
 S. I take not & for the reaſo: but & it is an olde  
 reaſonable Maxime in the lawe & they ſhoulde  
 A.ii be



the.iiii.chapter

be discharged in those cases, how be it some wyl  
say & in those cases the lawe of reason doth dis-  
charge them and therefore they say & if a statute  
were made & they shoulde be charged in those ca-  
ses of wast & the statute were againste reason &  
not to be obserued, but yet neuerthelesse I take  
it not so, for they might refuse to take such estate  
if they wuld, & if thei wil take the state after the  
lawe made: it semeth reasonable that thei take it  
with the charge and with the condicion that is  
appointed therto by the law though hurt might  
folow to them afterward therby, for it is often-  
times seē in the lawe & the lawe doth suffer him  
to haue hurte wout helpe of the lawe that wyl  
wilfully ren into it of his own acte not compel-  
led therto, and adiudgeth it his folly so to ren in  
to it, for which folly he shal also be many times  
without remedy in conscience. As if a mā take  
landes for terme of life, and bindeth hymselfe by  
obligacion that he shal leue the lande in as good  
case as he found it, if the houses be after blowen  
downe wyth tempest or destroyed wyth straung  
enemies as in the case & thou hast put before he  
shalbe bound to repaire them or els he shall for-  
fait his obligacion in law and consciēce, because  
it is his own act to bind him to it, & yet the law  
would not haue bounde him therto as thou hast  
sayd before. So me thinketh that the cause why  
the said tenants be discharged in the law in an  
accion of wast whan the houses be destroyed by  
sodeine tēpest or by straunge enemies: is by a spe-  
cial reasonable maxime in the lawe, wherby they  
be excepted frō & other general bōd before reher-  
sed,

sed & is to saye, they shal at their peryll see & no waste shalbe done, and not by the lawe of reason and sith there is no maxime in this case to helpe this tenant ne & he cannot be holpen by the law of reason, it semeth & he shal bee charged in thys case by hys own acte both in lawe & conscience, whether the straunger be able to recompence him or not. **D.** I doubt in this case whether the maxime & thou speakest of bee reasonable or not that is to saye, & tenauntes by the curtesye and tenantes in dower were bounden by & common law & they should do no wast the self, & ouer & at their peryll to see & no waste shoulde be done by none other. **F.** or & lawe semeth not reasonable that bindeth a man to an impossibilitie. And it is impossible to pꝛeuent & no wast shalbe done by straungers, for it may be sodeinly done in & night & the tenauntes can haue no notice of, or by gret power that they be not able to resist, & therefore me thiketh ought they not to be charged in those cases for the waste, without thei may haue good remedy ouer, and thā percase & said maxime wer sufferable, and els me thinketh it is a maxime against reason. **S.** As I haue said before no man shalbe compelled to take & bond vpon hym but he that wil take the land, and if he wyl take the land: it is reason he take the charge as & law hath appoynted with it, and thā if any hurt grow to him therby: it is through his owne act & his owne assent, for he might haue refused the lease if he would.

**D.** Though a mā may refuse to take estate for terme of life or for terme of yeres, & a womā may

**I.iii.**

refuse

## The.iiii.chapiter

refuse to take her dower, yet tenant by & curtesy can not refuse to take his estate, for immediatly after & death of his wife, & possession abideth stil in him by the act of the law wythout enter, and than I put the case that after the death of hys wyfe, he woulde waue the possession and after wast were done by a stranger: whether thinketh thou that he should aunswere to the wast. S.

I thinke he should by the law. D. And how standeth that with reason, seenge there is no default in him. S. It was his default, and at his own peryl that he would mary an inheretrix whereupon such daunger myght folow. D.

I put case that he were within age at the maryage or that the lande descended to his wife after he married her. S. There thou mouest a farther doubt than the first question is, and though it were as thou saiest, yet thou canst not say but that there is as gret default in him as is in hym in the reuerſion, and that there is as great reaso why he should be charged wythe & wast as that he in the reuerſion shulde be disherited and haue no maner remedy ne yet no profit of the land as the other hath, and though the said maxime may be thought very strait to & said tenauntes: yet is it for to be fauoured as much as may be reasonably because it helpeth mucche the comon welth for it hurteth the common wealth greatly whan woodes & houses been destroyed, & if thei should answer for no wast, but for wast done by the self ther might be wast done by strangers by comaundement or assent in such colourable maner that they in the reuerſion should neuer haue profe of theyr

their assent. D. I am contente thynne opini-  
on stand for this time, & I pray the now procede  
to another question.

¶ The fourth question of the student.

¶ The.v.Chapter.

I f he that is the very heire be certified by the  
ordinary bastard: and after bring an accion as  
heire against another person, whether may anye  
mā knowig the trowth be of counsell & the tenant  
& pleade the said certificat against the demaundant  
by conscience or not. D. Is the law in this case  
¶ al other agaynst whō the demaundant hath title  
shal take aduantage of this certificat as wel as  
he at whose suite he is certified bastard? S.  
ye verily, & that for two causes, whercof y one  
is thys. There is an old maxime in the law ¶ a  
mischief shal be rather suffred than an inconueni  
ence, & than in this case if another writ shoulde  
afterward be sent to another Bishop in another  
accion to certify whether he were bastard or not,  
peraduenture that Bishop would certifye that  
he were mulier, that is to saye lawfully begottē,  
and than he shoulde recouer as heire, and so he  
should in one selfe court be taken as mulier, and  
bastard, for auoidinge of whiche contrarietye,  
the law wyl suffer no mo writtes to goo forth  
in that case, and suffreth also all men to take ad-  
uantage of y certificat rather thā to suffer such  
a cōtradiccō in y court which in y law is called  
an incōueniēce, & the other cause is because this  
certificat

## The.v.chapter

*the B. of Shopp  
or his case*  
certificat of the Bishop is the hiest triall that is  
in the law in this behalf. But this is not vnder-  
stande but where bastardy is layde in one that  
is partie too the writ for if bastardye be layde in  
one that is a straunger to the writ as if vouche  
pray in ayde or such other, than & bastardye shal  
be tried by .xii. men by whiche triall he in whom  
the bastardy is laid shal not be concluded because  
he is not prue to the trial and maye haue no at-  
taint, but he & is partie to the yssue maye haue  
attaint, and therefore he shalbe concluded & none  
other but he, & forasmuche as the saide Maxime  
was ordained to eschewe an inconueniencye (as  
before appeareth) it semeth & euery man learned  
maye wyth conscience pleade the sayde certificat  
for auoydng thcrof, and geue counsaile therein to  
the party accordyng vnto the law, for els & sayde  
inconueniencye must nedely folowe. But yet ne-  
uertheles I do not meane thereby & the partye  
maye after whan he hath barred the demaundant  
by the saide certificat retaine the land in conscy-  
ence by reason of the saide certificat, for though  
there be no lawe to compell him to restore it, yet  
I thinke wel that in conscience he is bounde to  
restore it, if he knowe & the demaundaunt is the  
very true heire: wherof I haue put diuers cases  
like in the .xvii. Chapter of our first dialogue in  
Latin, but my intent is & a man learned in the  
law in this case and other lyke may wyth consci-  
ence geue his counsaile accordyng to the law in  
auoiding of suche thinges as the lawe thinke it  
shoud for a resonable cause be eschewed.

D. Thoughe hee & doeth not knowe whether  
he be bastard or not maye geue his counsaile and  
also



also pleade the sayd certificat: yet I thynke & he that doth know himself to be the very true heire may not pleade it, and & is for two causes wherof the one is this.

Euery man is bound by the lawe of reason to do as he woulde be done to, but I thinke & if he that pleadeth that certificat were in like case: he woulde thinke & no man knowing the said certificat to be vntreue might w conscience pleade it against hym, wherfore no moze maye he pleade it against none other.

The other cause is this, althoughe the certificat be pleaded, yet is & ternaunt bounden in conscience to make restitution thereof as & hast said thy selfe, and than in case & he woulde not make restitution, than he & pleadeth the plee, shoulde ren therby in lyke offeice, for he hath holpe to set the other man in such a libertie & he may chose whether he wpll restore the lande or not, & so he should put him selfe to the ieopardye of another mans conscience. And it is wrytten Ecclesiasti.iii Qui amat periculū: peribit in illo. That is, he & wylfully wil put himselfe in ieopardy to offend, shall perish therein, and therefore it is the surest waye to eschewe perils from hym that knoweth that he is heire, not to pleade it and as for & inconuenyence & thou saiste muste nedely folowe but the certificat be pleaded: as to that it may be answered that it may be pleaded by some other & knoweth not & he is very heire, & if the case be so far put & there is none other lerned ther but he, thā me thinketh that he shal rather suffer the said inconueniencie thā to hurt his own cōsciēce, for alway charite beginneth at himselfe and so e=

uery

## The.vi chapter.

nery man ought to suffer al other offēces rather than he himselfe would offende. And nowe that thou knowest mine opinion in this case I pray the procede to another question.

### The fifth question of the student.

#### The.vii Chapter.

**W**hether maye a man wpyth conscience be of counsaile wpyth the plaintife in an accion at the common law knowinge y<sup>e</sup> the defendant hath sufficient matter in conscience wherby he may be discharged by a Subpena in the chauncery whiche he cannot pleade at the common law or not? D. I pray the put a case therof in certaine, for els the question is very general.

**S.** I wyl put the same case that thou puttest in our firste dialogue in Latin the.x. Chapter y<sup>e</sup> is to say if a man bound in an obligacion pay the money and taketh none acquitaunce so y<sup>e</sup> by the common lawe he shall be compelled to paye the money againe for such consideracion as apperth in the.xv. chapter of the sayd dialogue wher it is shewed evidently how the law in y<sup>e</sup> case is made vpon a good reasonable ground much necessarie for all the people, howe be it y<sup>e</sup> a man may sometime through his own default take hurt therby wherein I pray the shew me thine opinion.

**D.** This case semeth to be like to the case that thou hast put next before this, and that he that knoweth the paiement to be made doth not as he would be done to if he geue counsel that an acci-  
on

on should be taken to haue it paid againe.

**S.** If he be sworne to geue counsell according to the law as sergeantes at the law be, it semeth he is bounde to geue counsaile according to the law, for els he should not performe his oth.

**D.** In those wordes (accordyng to the law) is vnderstand the lawe of god and the law of reason as well as the lawe and customes of the realme, for as thou hast said thy self in our first dialogue in Latin, & the law of God and the lawe of reason be two especial groundes of & lawes of Eng-  
lād, wherfore as me thiketh he may geue no coun-  
sel (saying his othe) neyther againste the lawe of  
God nor the law of reason, and certain it is that  
this article, that is to say, & a man shall do as he  
would be done to, is grounded vpon both & said  
lawes. And first & it is groundēd vpon the lawe of  
reason, it is euident of it selfe. And in the. vi. chap-  
ter of **S. Luke** it is sayd. Et prout vultis vt fa-  
ciant vobis homines, et vos facite illis similiter  
that is to saye all & other mē should do to you: do  
you to them, and so it is groundēd vpon the lawe  
of god, wherfore if he shulde geue counsaile against  
the defendaunt in & case, he shoulde do agaynst  
both the saide lawes. **S.** If the defendaunt  
had none other remedye but the common lawe,  
I would agree wel it were as thou sayst, but in  
this case he may haue good remedye bi a subpena  
and thys is the waye & shal induce him directlye  
to his subpena, & is to say, whā it appereth that  
the plaintife shal recouer by the law. **D.**  
Though & defendāt may be discharged by subpenā  
yet the bringing in of his profes there wylbe to  
the

## The.vii chapter.

the charge of the defendand, and also the proues may dye or they come in. Also ther is a groūd in þe lawe of reason, quod nihil possumus contra veritatem, þe is we may do nothings agaynste the trouth, and sythe hee knoweth it is trouth þe the money is payde he maye doo nothing against the trouth, and if he shuld be of counsaile wyth the plaintife he muste suppose and auerre þe it is the very due det of the plaintife, and þe the defendāt withholdeth it from him vnlawefullye whyche hee knoweth hys selfe to be vntrue, wherfore he maye not be conscience in this case bee of counsaile to the plaintife, knowynge þe the playntife is payde al ready, wherfore if thou bee contented to thys aunswer I pray the procede to some other question. S. I wyl wyth good wil.

## The.vi Question of the student.

## The.vii.Chaptre.

**A** Man maketh a feoffement to the vse of hym and of hys heires, and aff þe feffoure putteth in his beastes to manure the groūd and þe feoffe taketh them as damages fesant and putteth the in ponde and the feffour bryngeth an accion of trespasse against him for entring into hys grond &c. whether may any man knowing the said vse be of counsaile with the feoffe to auoide þe accion. D. May he by the common lawe auoide þe accion seynge þe the feoffour oughte in conscience to haue the profits. S. Yee verily, for as to þe

com-

common lawe & whole interest is in the feoffe, & if the feoffe wyl breake his conscience and take the profites: & feoffour hath no remedy by & common law, but is drue in that case to sue for his remedy by sub pena for the profits, and to cause him to refoffe him againe, and & was sometime the most comō case where & Sub pena was sued that is to say before the statute of Rycharde the third but byth & statute the feoffour may lawfully make a feoffement. But neuertheless for the profits receiued, the feoffour hath yet no remedy but by Sub pena as he hadde before the sayd estatute. And so the supposell of thys accion of trespassse is vnttrue in euery point as to & comon lawe.

D. Though the acciō be vnttrue as to the law yet he & sueth it oughte in conscience to haue & he demaūdeth by the accion, & is to say, damages for the profites, & as it semeth no man may with conscience geue counsaile against & he knoweth cōscience would haue done. S. Though conscience would he should haue & profits, yet conscience wil not & for the attaininge therof & feoffor shuld make an vnttrue surmise. Therfore against the vnttrue surmise euery mā maye with cōsciēce geue hys counsaile, for in & doyng hee resisteth not & plaintife to haue the profites, but he with standeth hime & he should not maintaine an vnttrue accion for & profits. And it suffiseth not in the law ne yet in conscience as me semeth & a mā haue ryghte to & he sueth for, but & also he sue by a iust menes, and & he haue both good right & also a good & true cōueiaūce to come to his right, for

*By plande of  
estry 91. 92.*

*stat. R. 3.*



## The.vii.Chapter.

for if a man haue righte to landes as heire to his father and he wyl bring an accion as heire to his mother & neuer had ryght, euery man may geue counsaile againste & accion though he know he haue righte by another meanes, & so as me thinketh he may do in dilatories, wherby the partye may take hurt if it were not pleaded, though he know the plaintife haue ryght as if the partie or & towne be misnamed or if & degrees in writs of entre be mistaken, but if the part should take no hurt by admitting of a dilatory ther he & knoweth that the plaintife hath right may not pleade & dilatorye withe conscience as in a formedon to pleade in abatement of & writ because he hath not made hymselfe heire to hym & was last seased, or in a writ of right for & the demaundaunt hath ommitted one & tended right ne such other ne he may not assēt to the casting of an Effoigne nor protection for him if he knowe that the demaundaunt hath ryght, ne he may not vouch for him excepte it be that he knoweth & the tenant hath a true cause of a voucher, and of lien, & that he doth it to bring hym thereto, & in lykewise he may not pray in ayde for hym: onles he know & pray haue good cause of voucher and lien ouer, or that he know that the pray hath somewhat to pleade & the tenant may not pleade as villenage in the demaundaunte or suche other. D.

Though the plaintife hath broughte an accio & is vnttrue and not maintainable in the law, yet & defendāt doth wrong to & plaintife in the withholding of the profites as well before the accion brought as hanging the accion, and that wrong  
as

as it semeth the counsaillour doth maintaine and also sheweth himselfe to fauoure the partie in wrong whan he geueth counsaile against the accion.

**S.** If the plaintife do take that for a fauour and a maintenaunce of his wronge, he iudgeth farther than the cause is geuen, so that the counsaillour do no moze but geue counsaile againste the accion, for though he geue him counsaile to stand the accion for the vnt ruth of it, and that he shuld not confesse it & to make therby a fine to the king without cause yet it may stand with reason that he may geue counsaile to the party to yeld & profite, & therfore I thinke he may in this case of counsaile to him at the common law and be against him in the chauncery and in either court geue his counsaile without any contrariosity or hurt of conscience, and vpon this ground it is that a man may with good conscience be of counsaile with hym that hath land by descent or by a continuance without title, if he that hath the righte bringe not his accion accordinge to the lawe for the recouering of his right in that behalfe.

**The** ~~question~~ question of the student.

**The. viii. Chapter.**

**I** f a man take distress for dett vpon an obligacion or vpon a contract or such other thing that he hath right title to haue, but that he ought not by law to distress for it, and neuertheless he kepeth the

## The.viii.Chapter

*in lawfully*  
the same distresse in pound tyl he be payde of his  
duety, what restitution is he bounde to make in  
this case, whether shal he repaye the money be-  
cause he is cōe to it by an vnlawefull meanes or  
only to restore the partie for & wrongfull taking  
of the distres or for neither, I pray you shew me.  
D. what is the lawe in this case. S. That  
he & is distrained, may bringe a special accion of  
trespasse agaiſt him that distrained, for & he toke  
his beastes wrongfully & kept them til he made a  
fine & therfore he shal recouer & fine in damages  
as he shal do for the residue of trespass, for the ta-  
king of the money by such compulsion is taken  
in the law but as a fine wrongfully taken, though  
it be his duety to haue it. D. yet though he  
may so recouer, me thinketh & as to the repaimēt  
of the money he is not bounde thereto in conscy-  
ence so & he take no more than of right he ought  
to haue, for though he come to it by an vniuste  
mene yet whā & money is paide him, it is hys of  
right and he is not bound to repay it onles it be  
recouered as thou said, and than whan he hath  
repaide it hee is as me thincketh restored to his  
first acciō, but to the redeliuere of the beastes &  
such damages such hurt as he hath by & distres.  
I suppose he is bound to make recōpence of thē  
in conscience wythout compulcion or sute in the  
law, for though he might lawfully haue sued for  
his duety in such maner as & lawe hath ordred,  
yet I agree well & he maye not take vpo him to  
be his owne iudge & to come to his duety agaiſt  
the order of the lawe, and therfore if anye hurte  
come to & partye by & disorder he is bounde to  
restore

restore it. But I woulde thinke it were & more  
doubt if a man toke such a distresse for a trespass  
done to hym and kepeth the distresse tyll amen=  
des bee made for the trespassse, for in & case the  
damages been not in certaine but bee arbytrable  
eyther by the assente of the parties or by .xii. men  
and it semeth that there is no assente of the par=  
tye in this case speciallve no free assent, for that  
he doth: is by compulsion and to haue his distres  
again, and so his assent is not muche to bee pon=  
dered in & case, for all his assessyng of hym & toke  
the distresse and so hee hathe made hym self hys  
owne iudge and that is prohibyted in all lawes,  
but in that case where the distresse is taken for  
dette: he is not his owne iudge, for & dette was  
iudged in certayne before by the firste contracte  
and therefore some thynke greate diuersitie be=  
twene the cases. S. By that reason it see=  
meth that yf he that distrayneth in the first case  
for the det take any thyng for hys damages that  
he is bounde in conscience to restore it agayne,  
for damages bee arbytrable and not certaine no  
more than trespassse is, and me semeth that bothe  
in the case of trespassse and det he is bounde in co=  
science to restore that he taketh, for though he  
ought in right to haue lyke summe as he recey=  
ueth yet he oughte not to haue & money that hee  
receyueth, for hee came to & money by an vniuste  
meanes, wherefore it semeth he oughte to restore  
it agayne. D. And yf he should be compelled  
to restore it agayne: shoulde he not yet (for & hee  
receyueth it once) bee barred of hys fyrste accyon  
notwithstandyng the repaymente. S.

## the. ix. Chapter.

I wpll not at thys tyme clearly aslople thee & question, but this I wpll saye & pf any hurt come to him therby, it is throughe hys owne default, for & hee woulde dooe agaynste the lawe, but nevertheless a lytle I wpll saye to thy question, & as me semeth whan he hath repayed the money & he is restozed to his first accion. As pf a manne condemned in an accion of trespas paye & money and after & dofendaunte reuerse the iudgemente by a writ of erreure and haue hys money repaide than the playntyfe is restozed to his first accion. And therfore pf he that in this case tooke the money: restozed & hee tooke by & wrongefull dystresse: or that he ordered the matter so liberallye that the other murmure not, ne complayn not at it, me semeth he dyd very wel to bee sure in conscience: and therfore I woulde aduise euerye manne to bee well ware howe hce dystrayneth in suche case agaynste the lawe. D. Thy counsaile is good and I note muche in this case that & partie may haue an accion of trespas agaynste hym & dystrayned so & he is taken in & lawe but as a wronge doer, and therfore to paye & money agayne is the sure waye as thou haste sayde before. And I praye thee nowe shew me for what thyng a man maye lawefully distraine as thou thynkest.

**C** For what thyng a man may lawfully distrayn.

**C** The. ix. Chapiter.

**I** mannt



A manne maye lawfullye distrayne for a rente service and for all maner of seruyces, as homage, fealtie, escuage, sute of courte, relieffes and such other. Also for a rente reserued vpon a gifte in taylor, a lease for terme of lyfe, for yeaeres or at will, if he reserue the reuercyon: the feoffer shall distrayne of common ryghte though there bee no distresse spoken of. But in case a manne make a feoffemente and that in fee by endenture reseruyng a rente he shal not distrayne for that rente vnlesse a distresse bee expresselye reserued, and yf the feoffemente bee made wythouten dede reseruyng a rente that reseruacyon is voyde in the lawe, and hee shall haue the rente onely in consyence and shall not distrayne for it, and lyke law is where a gifte in taylor or a lease for terme of lyfe is made the remaynder ouer in fee reseruyng a rente that reseruacion is voyde in the lawe. Also yf a manne leased of landes for terme of lyfe graunteth awaye his hole estate reseruyng a rent, that reseruacion is voyd in the law without it be by endenture, and if it be by endenture: yet he shall not distraine for the rente but a distresse be reserued. Also for amerciamente in a lette the Lorde shall distraine. But for merciament in a court baron he shall not distraine.

Also if a man make a lease at Myghelmasse for a yere, reseruing a rent payable at the feast of the Annunciacion of our Lady and saynct Mychel & Archaungell, in y case he shall distrayne for the rent due at our Lady daie but not for y rent due at Myghelmasse because the terme is expyred.

It.ii.

But

the. ix. Chapter.

But if a manne make a lease at y<sup>e</sup> feast of Christmas for to endure to the feast of Chyrltemasse nexte folowynge, that is to saye for a yeaere reseruyng a rente at the aforesaide feast of y<sup>e</sup> Annunciation of our Lady and saint Michael & Archangel there he shal distrain for both y<sup>e</sup> rentes as lōg as y<sup>e</sup> terme continueth, y<sup>e</sup> is to say till y<sup>e</sup> aforesaide feast of Christmas.

Also if a manne haue lande for terme of lyfe of John at Stoke and maketh a lease for terme of yeres reseruyng a rent, y<sup>e</sup> rent is behinde & John at Stoke dieth, there he shall not distrain because his reuercion is determined.

Also if he to whose vse feffes bene sealed maketh a lease for terme of yeaeres, or for terme of life, or a gyfte in taylor reseruyng a rente there the reseruacion is good and the lessoure shall dysstrayne.

Also if a towne ship be amerced and y<sup>e</sup> neyghbours by assent asseleth a certayne summe vppon euery inhabitant, and agree y<sup>e</sup> if it bee not payde by suche a day: y<sup>e</sup> certayn parsons therto assigned shall dysstrayne. In this case y<sup>e</sup> distresse is lawfull. yf lord and tenaunte be, and y<sup>e</sup> tenaunt doth hold of y<sup>e</sup> lord by fealtye and rente, and y<sup>e</sup> lord dothe graunte awaye the fealtye reseruyng the rente and the tenaunt attourneth in this case hee that was lord maye not dysstrayne for the rent, for it is become a rent secke. But if a manne make a gift in taylor to another reseruyng fealtye and certayn rente, and after y<sup>e</sup> he graunteth away y<sup>e</sup> fealtye reseruyng the rente and the reuercion to himselfe, in this case he shall dysstrayne for the rente for,

for the graunt of the sealtie is voyde for the sealtie cannot bee seuered fro the reuercyon. Also for heriote seruice the lord shall distrain and for heriot custome hee shall cease and not distraine. Also if a rent bee assigned to make a particion or assignement of dower egall hee or she to whome & rente is assigned may distrayne and in all these cases aboue sayde where a manne may distraine he may not distrayne in the night, but for damages tesaunte, that is to saye, where beastes dooe hurt in his grounde he may distrayn in & nyght. Also for wastes, for reueracions, for accomptes for detts vpon contractes or such other no manne may lawfully distraine.

¶ The. viii. question of the student.

¶ The. x. Chapter.

If a man do a trespas and after make his executour and dye before any amēdes made whether bee his executours bounde in conscience to make amēdes for the trespas yf they haue sufficient goodes thereto, though there be no remedy agaynst the by & lawe to compell the to it. D. It is no doubt but they are bounde therto in conscience before any other dede in charitye & they may do for him of their owne deuocion. S. Than would I wote if the testatour made legacies by his will, whether the executours be bound to do first, that is to say, to make amēdes for & trespas or to paye the legacies, in case they haue no goodes to dooe bothe. D. To pay legacies

## the .x. Chapter.

For if they shoulde firste make recompence for þ  
trespasse and than haue not sufficient to paye the  
legacies: they shoulde bee taken in the lawe as  
wasters of theyr testatours goodes for they wer  
not compellable by no lawe to make amendes  
for the trespassse beecause euerpe trespassse dyeth  
wyth the parson, but the legacies they shoulde  
bee compelled by the lawe spirituall to fulfill and  
so they shoulde bee compelled to paye þ legacies  
of their owne goodes, and they shall not be com-  
pelled thereto by no lawe ne conscience, but if  
the case were that he leaue sufficiente goodes to  
dooe bothe, then me thynketh they bee bound to  
dooe bothe, and that they bee bounden to make  
amendes for the trespassse before they maye dooe  
anye other charitable dedde for the testatoure of  
their owne minde as I haue saide before, excepte  
the funerall expenses that bee necessarye whyche  
muste bee allowed before all other thyng. S.  
And what the prouinge of the testament? D.  
The ordinarie maie nothinge take by conscience  
therefore, if there bee not sufficient goodes beside  
for the funerall to paye the detts and to make  
restitution. And in likewise the executours bee  
bounde to paie detts vppon a simple contract be-  
fore anye other dedde of charitie that they may do  
for their testatour of their owne deuocion though  
they shall not bee compelled thereto by the lawe.  
† S. And whether thinkest thou that they bee  
bounde to dooe firste, þ is to saye, to make a-  
mendes for þ trespass or to paie the detts vppon a  
simple contract. D. To paie the detts for þ is  
certain and the trespass is arbitrable. S.

Than

Than for the plainer declaracion of this matter  
and other like I prae thee shewe me thy minde  
by what lawe it is & a manne maye make execu-  
tours and & the executours if they take vpon the  
be bounde to parfourme the will and dispose the  
goodes & remayne for the testatoure. D. I  
think & it is best by the lawe of reason. S. And  
me thinketh that it shoulde bee rather by the cu-  
stome of the realme. D. In al countreys and  
in all landes they make executours. S. That  
semeth to be rather by a generall custome after  
the lawe and custome of propartie was brou-  
ght in than by the lawe of reason, for as longe as  
all thinges were in common: there wer no execu-  
tours ne willes ne they needed not than & whan  
proparty was after brought in: me thinketh that  
yet making of executours and disposing of goods  
by will after a mannes death folowed not neces-  
sarily thereuppon, for it myghte haue bene made  
for a lawe that a manne shoulde haue hadde the  
propartie of his goodes onely durynge his lyfe, &  
that than his dettes payde all his goodes to haue  
bene lefte to his wife and children or nexte of hys  
kynne without any legacies making thereof and  
so might it now be ordeined by statute, and the  
statute good and not againste reason, wherefore  
it appeareth that executours haue no auctorite  
by the lawe of reason but by the lawe of manne.  
And by the oldelawe and custome of this realme  
a manne maye make executours and dyspose  
his goodes by his will, and than his executours  
shall haue & execucion therof and his heires shal  
haue nothing but if any particuler custom help &



## the .x. Chapter.

the executours shall also haue & hole possession and disposicion of al his goodes and chatelles as well reall as parsonall, though no worde bee expressly spoken in & will & they shall haue them, and they shall haue also accions to recouer all Dets due to the testatour though all Dets and legacies of & testatour bee payde before and shall haue & disposicion of them to the vse of & testatour and not to theyr owne vse, and so me thinketh that & auctoritie to make executours and & they shall dispose the goodes for the testatour is by the custome of the realme. But than I thik as thou saiest & by the lawe of Godde they shall be bounde to doe & firste, & is to the most profyt of the soule of their testatour where the disposicion thereof is lefte to their discrecion, and that I agree well is to paye Dets vpon contractes and to make amendes for wronges done to & testatour though they be compelled therto by the lawe and custome of the realme if there bee none other Det nor legacye & they bee bounde to paye by & lawe but if two seuerall Dettes be payable by & lawe than whiche Det they shall do firste in consence: I am somewhat in doubte. D.

Let vs first know what & common law is therein. S. The common law is & yf the testatoure owe .x. li. to two men seuerallye by obligacion or by such other maner that an accion lieth against his executours thereof by the lawe, and hee leueth goodes to paye & one and not bothe, & in & case he that canne first obtayne his iudgement againste the executours shall haue execution of the hole and the other shall haue nothinge, but

to

to whiche of them he shall in conscience owe his fauour: the common lawe treateth not. D.

Therein muste bee considered & cause why the Dets beganne and than hee muste after consp-  
cure beare his lawfull fauoure to hym that hathe  
& clereft cause of Det, and yf boti haue like cause  
than in conscience hee muste beare his fauoure  
where is moeste nede and greatest charitie.

S. Whape the executours in that case delaye  
that accyon that is fyrste taken if it stande not  
with so good conspence to bee payde as another  
Det wherof no accion is broughte and procure  
an accion maye bee brought thereof and than  
to confesse that accion that he maye so haue exe-  
cucion, and than the executours to bee dyschar-  
ged against the other. D. Why maye hee not  
in that case pay the other without accion and so  
bee dyscharged in the lawe agaynst the first. S.

No verelye for after an accion is taken the exe-  
cutour may not minister & goodes so but that he  
leauē so muche as shall paye the Det wherof &  
acion is taken, and yf he dooe he shall pay it of  
his owne goodes, excepte an other recouer and  
haue iudgement agaynst hym hangyng & accio  
and that without couin.

D. Than to aunswere to thy question, I  
thynke & by delayes that bee lawefull, as by Es-  
loynē, emparlaunce, or by a Dilatozpe plee in  
abatemente of the wyrt that is true, he maye de-  
laye it, but he may plede no vnttrue plee to pre-  
ferre the other to his duetie. But I praye thee  
what is the lawe of legacies restitution and dets  
vpō cōtracts & parcase sought rather after charity  
to

## the.xi. Chapter.

to bee paide than a det vppon an obligaciō what may the fauoure of ꝑ executour dooe in those cases. **S.** Nothing for if they either performe legacies, make restitutions, or pay Dets vppon contractes and kepe not sufficiente to pay Dets whiche they are compellable by the lawe to paye that shalbe taken as a Deuastauerunt bona testatoris, ꝑ is to saye, that they haue wasted the goodes of their testatoure, and therefore they shall bee compelled to paye the dettes of theyre owne goodes, and so it is if they paye a det vppon an obligacion whercof the day is yet to come though it bee the clerer det and that it bee the more charitic to haue it paid. **D.** Yet in that case if hee to whome the Dette is all readye owing forbeare tyll after that daie of the other obligacion is past, then he maye paye him without daunger. **S.** That is true if there bee no acciō taken vppon it and though there bee, yet if that acciō maye bee delayed by lawfull meanes as thou haste spoken of before: tyll after ꝑ day and than an acciō is taken vppon it than maye the executours confesse ꝑ acciō and tha after iudgement he may pay the det without daunger of the lawe. **D.** Is not that confessing of the acciō so done of purpose a couyn in the lawe? **S.** No verelye for couyn is where the acciō is vntrewe, and not where the executours beare a lawefull fauoure. **D.** The ordinarie vppon the accompte in all the cases before rehearsed will regarde muche what is best for the testatour. **S.** But he may not driue them to accept agaynst the order of the common law.

¶ The

¶ The.ix.question of the  
Student.

## ¶ The.xi.Chapiter.

A Man is indetted to another vppon a symple contract in.xx.li. & he maketh his will and be-  
quegeth.xx.li.to Henry Hart & dieth,and leaueth  
goodes to his executours onely to burie him &  
& to parfourme & said legacie,and after & said exe-  
cutours deliuer & goodes of their testatoure in  
parfourmaunce of & saide bequeste,whither is he  
to whom the bequeste is made bounde in conscy-  
ence to paie & saide Det vppon & symple con-  
tracte to & saide Henrye Harte or not: D. Is  
hee not bounde thereto by & law. S. No ve-  
rely.D. And what thinkest thou hee is in con-  
science.S. I thinke & he is not bounde therto  
in conscience,for he is neither ordinarie,admini-  
stratour,nor executour.And I haue not hearde &  
any man is bounde to pay dets of anye man & is  
decesed,but he be one of those thre,for & goodes  
& the testatour lefte to & executours were neuer  
charged with & det,but & parsons of & testatour  
while he liued was onely charged with & det and  
not his goodes and his executours & represente  
his estat after his death haupng goodes thereto  
of & testatours bee charged also w & Dets and  
not & goodes.And therfore if an executour gene-  
awaye or sell all & goodes of & testatoure or o-  
therwise waste them: hee & hathe & goodes is  
not charged with & Dets in lawe nor conscience,  
but & executours shall bee charged of their own  
goodes

## the.xi. Chapter.

goodes and in lykewyse yf John at Stoke owe  
to A.B. xx. li. And A.B. oweth to C.D. xx. li. &  
after A.B. dyeth intestate haupnge none other  
goodes but the sayde xx. li. whiche yf saide John  
at Stoke oweth hym, yet the saide C.D. shall  
haue no remedye against the said John at Stoke  
for he standeth not charged to hym in law nor  
conscience. But the ordinarie in that case muste  
commit administracion of y goodes of the sayde  
A.B. And the sayde administratoure muste le-  
uue the money of the saide John at Stoke and  
paie it to the saide C.D. And yf saide John at  
St. shall not paye it himselfe because hee is not  
charged therewith to him, and no moze me thyn-  
keth in this case yf he to whom yf bequest is made  
is neither charged to him yf the money was owe-  
yng to in law nor conscience.

D. Than shewe me thynkynde by what lawe  
it is grounded as thou thinkeste that executours  
bee bounde to paie Dets before legacies, whe-  
ther is it by the lawe of God, or by yf lawe of rea-  
son, or by the lawe of manne as thou thynkest.  
S. I thinke yf it is bothe by the lawe of reason  
and by yf lawe of godde for reason will that they  
shall dooe firste yf is beste for the testatoure, and  
that is to paye Dets that his testatour is bound  
to paye before legacies yf hee is not bounde to.  
And also by yf lawe of god they are bound to pay  
yf Dets first for sithe they are bounden by yf lawe  
of god to loue theyr neighbour, they are bound to  
do for him yf shalbe best for him whan they haue  
taken the charge thereto, as executours dooe  
whan they agree to take the charge of that will  
of



of their testatour vpon them, and it is better for  
the testatour that his dettes bee payde: where-  
fore his soule shall suffer payn: than that his le-  
gacies be parfourned, wherefore hee shall suf-  
fer no payne for the not parfournyng of them.  
And  $\text{¶}$  is to bee vnderstande where the legacy is  
made of his owne free will and not where it is  
made as a satisfaccion of any dutye. And after  $\text{¶}$   
saying of saincte Gregoꝛy the very true proufe  
of loue is the dede. But this manne is not in  $\text{¶}$   
case, for he neuer tooke the charge vppon hym to  
paye the Dettes of  $\text{¶}$  testatoure. And therefore  
he is not bounde to them in lawe noꝛ conscience  
as me semeth. But rather the executours sholde  
haue bene ware oꝛ they hadde payde the legacies  
seing there were dettes to paie. D. The exe-  
cutours mighte none otherwise haue done in  
this case but to paie the legacies for theym they  
shoulde haue bene compelled by the law to haue  
payde, and so they coulde not haue bene to haue  
payde the det vppon a contracte. And therefore  
they did well in parfournyng of  $\text{¶}$  legacie, but he  
to whom the legacy was made ought not to haue  
taken them but ought in conscience to haue suf-  
fered them to haue gone to the paiement of  $\text{¶}$  Det  
and sithe he did not so but tooke them where hee  
had no right to them, it semeth  $\text{¶}$  whan hee tooke  
them he toke  $\text{¶}$  the charge in conscience to paye  
 $\text{¶}$  det, for sithe  $\text{¶}$  executours were compellable by  
the lawe to parfourne  $\text{¶}$  bequest and not to pay  
 $\text{¶}$  Det, therefore whan they parfourned that be-  
queste, they were discharged thereby agaynst  
hym that the Dette was owyng to, in  $\text{¶}$  lawe  
and

## the .xi. Chapter.

and conscience and than & charge rested vpon him that tooke & goodes where he ought not in conscience to haue taken them, but if it hadde bene a Det vpon an obligation oz suche other Dette whereuppon remedy haue bene hadde agaynste the executours by the lawe, & there suppose that though the executours hadde parfourned the legacy that yet he to whom & legacye was made and parfourned hadde not bene charged in conscience to the paiement of & Det for & executours stode styll charged thereto of their owne goodes and he to whom & bequest was made was onely bounde in conscience to repay that he receiued to & executours because he hadde no right to haue receiued it, for agaynste the executours he had no right thereto. **S.** Than it semeth in this case & in likewise he to whome the bequest was made, shoulde repaye that he receiued to the executours and than they to paye it rather than he. **D.** The executours haue no farther meddling wyth it as this case is, for whan they parfourned the bequest they were discharged agaynste bothe the other in lawe and conscience, and also hee to who the bequest was made stode not in this case charged to the executours, for as agaynst them he had good title by the lawe, and so this charge standeth onely agaynste him that the Det is owynge to, and the same law that is in this case vpon a Det vpon a contract is if & testatour had doone a trespassse whereuppon he ought to haue made restitution, that is to saye, & hee to whome the bequeste is made is bounde to make & amends for the trespassse, for it shoulde be no discharge to him  
to

to paye it agayne to þe executours withoute they payde it ouer, and it were vncertayne to hym whether they woulde paye it or not.

And therefore to be out of perill: it is necessary þe pale it himself and than is he surely discharged against all men.

¶ The.x.question of the  
Studente.

¶ The.xii.Chapter.

¶ A man seised of certain land in his demeane as of fee hath issue two sonnes and dieth seised, after whose death a straunger abateth, & taketh þe profytes, and after þe eldest sonne dieth withoute issue and his brother bringeth an assise of mortdauincester as sonne and heire to hys father not making mencion of his brother and recouereth þe lande with damages fro þe death of his father as he maye well by þe lawe, whether in this case is þe yonger brother bounde in conscience to paye to þe executours of þe eldeste brother þe value of þe profytes of þe saide lande þe belongeth to the eldeste brother in his life or not. D. What is thyne oppinion therein. S. That lyke as þe said profytes belonged of ryghte to the eldeste brother in hys lyfe, and that hee hadde full auctorite to haue released as well the ryghte of the sayde lande as of þe sayde profytes which release should haue bene a clere barre to þe younger brother for euer. That þe ryght of the sayde damages which

## the .xii. Chapter.

whiche bee in the lawe but a chatell, belonge to his executours and not to the heire, for no manner of chatell neyther reall nor parsonall shall not after the lawe of the realme dyscende vnto the heire.

**D.** Thou saidest in the case nexte before, & it is not of the lawe of reason that a manne shal make executours, and dispose his goodes by hys will, and & the executours shall haue the goodes to dispose but by & lawe of manne, and yf it bee lefte to the terminacion of the lawe of manne. Than in suche cases as the lawe geueth such chatelles vnto the executours, they shall haue good right vnto them, and in suche cases as the lawe taketh suche chatelles from them: they bene right fully taken from the. And therefore it is thought by many & if a manne sue a writ of right of ward of a warde & he hath by his owne fee and dyeth hanging the writ and his heyre sue a resomons accordynge to the statute of Westminster seconde and recouereth: that in that case the heire shall enioy the wardeshippe againste the executours, and yet it is but a chatell, and they take & reason to bee because of the saide statute and so myghte it bee ordayned by statute & all wardes shoulde goe to the heires and not to & executours. Right so in this case sithe the lawe is suche & the younger brother shall in this case haue an assise of Mortdauncester as heire to his father not makig any mencion of his elder brother and recouer damages as well in the time of his brother as in his owne time: it appeareth that the lawe geueth the righte of these damages to the heire & there-  
fore

foze no reconpence oughte to be made to the exe-  
cutours as me semeth, and it is not like to a writ  
of Auel, wher as I haue learned in Latin (sithe  
our first dialogue) the demaundant shal recouer  
damages only fro the death of his father, if he ou-  
uerliue the Auel, and the cause is, for the deman-  
dant though his Aiel ouerliued his father must  
of necessitie make his conueiaunce by his father  
& must make himsele son and heire to his father  
and cosin and heire to his Auel, & therefore in y  
case if the father ouerliued the Auel the abator  
wer bounden in consciēce to restore to the execu-  
tours of the father the profits ren in his tyme,  
for no lawe taketh them fro hym, but otherwyle  
in thys case as me semeth. **S.** If the yonger  
brother in thys case had entred into the lāde w-  
out taking any assise of Mortdauncecour as he  
myght if he would, to whom were the abatour  
than bounden to make restitution for those pro-  
fits as thou thinkest.

**D.** To the executours of the eldest brother, for  
in y case there is no lawe that taketh them fro  
them, and therefore the generall ground which is  
that al chatels shall go too the executours, hol-  
deth in that case, but in this case that ground is  
broken and holdeth not for y reaso that I haue  
made before, for commonlye there is no generall  
grounde in the law so sure, but that it sayleth in  
some particuler case.

**The.xii.question of the Student**

**The.xii.Chapter.**

**L.i.**

**A**



## the .xiii. chapter

**A** Man seased of land in fee taketh a wyfe, and after alieneth the lande & dyeth, after whose death his wyfe asketh her dower and the alienee refuseth to assigne it vnto her, but aft she asketh her dower again, & he assigneth it vnto her, whe ther is the alienee in this case bound in consciēce to geue the woman damages for the profitēs of the lande after her thyrde part fro y death of her husbonde, or fro the fyrst request of her dower or neither the one nor the other. **D.** What is the lawe in thys case. **S.** By the lawe the womā shal recouer no damages, for at the common law the demaundaunt in a writ of dower shoulde neuer haue recovered damages. But by the statuf of Marston it is ordained that wher the husbād dyeth seased y the woman shall recouer damages whych is vnderstand the profitēs of the lād sith the death of her hulband, and such damages as she hath by y for bearing of it, but in thys case the husband died not seased, wherfore she shal recouer no damages by the lawe. **D.** Yet the law is y immediatly after the death of her husbāde the wyfe ought of ryght to haue her dower if she aske it though her hulband dyed not seased. **S.** That is true.

**D.** And sith she oughte to haue her dower fro the death of her husbāde it semeth y she ought in conscience too haue also the profitēs fro the death of her husband though she haue no remedy to come to them by the lawe, for me thynketh y thys case is lyke too a case that thou puttest in our fyrst dyalogue in Latin the .xvii. Chapter. That if a tenaunt for terme of lyfe be disseased & dye,

die, and the disseasour dieth, and his heire etreth  
 and taketh the profits, and after he in the reuer=  
 sion recouereth the lands against the heire as he  
 ought to do by the lawe, that in that case he shal  
 recouer no damages by the law. And yet thou  
 diddest agree that in that case the heire is boude  
 in conscience to pay the damages to the deman=  
 dant and so me thinketh in this case & the seoffe  
 ought in conscience to pay the damages fro the  
 death of her husbād seing that immediatly after  
 his death she oughte to haue her dower, **S.**  
 Though she ought to be endowed immediatly aff  
 the death of her husbād, yet she cā lay no default  
 in the seoffe til she demaund her dower vpon the  
 ground & that the tenant be not ther to assign it  
 or if he be there that he wyl not assigne it, for he  
 that hath the possession of lād wherunto any wo=  
 man hath title of dower, hath the good auctorite,  
 as against her to take the profits til she require  
 her dower for euery womā & demaūdeth dower  
affirmeth the possession of the tenāt as agaist her  
and therfore although she recouer it by accio she  
leueth the reuerlion alway in hym againste who  
she recouerth though he be a disseasour & bring  
eth not the reuerlion by her recovery to hym &  
hath ryght as other tenauntes for terme of lyfe  
do. And for this reason it is that the tenaunte  
 in a wrytte of dower, where the husbāde dyed  
 sealed if he appeare the first daye, may say to ex=  
 cuse hymself of damages that he is and al tymes  
 hath ben redy to yeld dower if it had been dema=  
 nded, & so he shal not be receiued to do in a writ  
 of consinage neither in & case & thou remembrest  
 A. ii. about

the. xiii. chapter

aboue, for in both cases the tenantes be supposed by the writ to be wrong doers, but it is not so in this case, and so me thynketh it clere & the feoffe in this case shal neither be bound by lawe nor conscience to yeld damages for the tyme & passed before the request, but for the tyme after & request is greter doubt, howbeit some thinketh him not there bound to yeld damages because his title is good as is sayd before and that it is her default that she brought not her accion. D. As vnto the tyme before the request I holde me contēt & thine opinion so & he assigne the dower whan he is required, but whā he refuseth to assigne it, thā I thinke him bound in conscience to yeld damages for both tunces though he shal none recouert by the law. And fyrst as for the tyme after the refusal, it appeareth euidently & whan hee denied to assigne her dower he did agāst conscience, for he did not that of right to haue done by the law, ne as he would shoulde haue been done to him & so after the request he holdeth her dower fro her wrongfully, and ought in conscience to yeld damages therfore. And as to the default that thou assignest in her, that she toke not her accion, that forceth litle for actions nede not, but where the party wyl not do that he ought to doe of ryght. And for that he ought of right to haue done and didde it not, he can take none aduantage, and than as to the damages before & request me thinketh him also bounden to pay them, for whan he was requyred to assigne dower and refused. It appereth & he neuer intended to yelde dower fro the begynnig, & so he is a wrong doer in his own conscience,

conscience, and moze ouer if the husband die sealed, the law is such that if the tenat refuse to assigne dower whan he is required wherefore the woman bringeth a wryt of dower against hym, that in þ case þ womā shall recouer damages as wel for the tyme befoze the request as after, and yet he ought not in þ case after thyne opinion to haue yelded any maner of damages if he hed ben ready to assigne dower whan it was demaunded and some thinketh here. S. The cause in that case that thou hast put is for that the statute is general that the demandant shal recouer damages wher the husband dyed sealed, and that statute hath bene alway construed that wher the tenant may not say þ he is and hath been alway ready to yeld dower. &c, þ the demandaunt shal recouer damages fro the death of her husband.

But in thys case there is no lawe of the realme þ helpeth for the demaundaunt neyther common lawe nor statute, & furthermore though it might be proued by hys refusel þ hee neuer intended fro the death of þ husband to assigne her dower yet þ proueth not, but that he had good ryghte to take the profittes of her thirde part for the time as wel as he had of his own two partes: tyll request be made as is afore sayd and so me thiketh þ notwithstanding the denier he is no bound to yelde damages in this case but fro the tyme of þ request and not for the tyme befoze. D. For thys time I am content wyth thy reason.

**C**The .xii. question of the student.

The.xiiii.Chapter.

L.iii.

¶

## The.xv.chapiter.

**A** Man seased of certayn landes knowing that another hath good right and title to them leueth a fine with proclamacion to the intent he would extinct the ryghte of the other man, & the other man maketh no claime within .v. yeres, whether may he that leuied the fine hold & lande in conscience as he may do by the law. **D.** By this question it semeth that thou doest agre that if he that leueth the fine had no knowledge of & other mans ryght, that his right should than be extincted by the fine in conscience. **S.** Ye verily, for thou diddest shew a resonable cause why it should be so in our fyrst dialogue in Latin the xxiii. Chapter, as ther appereth. But if he & leuied a fine and that would extinct the ryghte of another, knowing & the other hath moze ryghte than he (thā I doubt therin) for I take thynce opiniō in our first dialoqe to be vnderstād in cōscience, where he & woulde extinct former rightes by such a fine with proclamacion knoweth not of any former title but for his mozesuretie if any such former ryght be: he taketh the remedye & is ordained by the law. **D.** whether doest thou meane in this case that thou putttest now that he that hath ryght, knoweth of the fine and wilfully letteth the .v. yeres passe wythout claime or & he knoweth not any thyng of the fine. **S.** I pray thee let me know thine opiniō in both cases and whether thou thinke that he that hath right be barred in either of the cases by conscience as he is by the law or not. **D.** I wyl wyth good wyl herafter, shewe me thy mynde therin: but at this time I pray & geue a litle sparyng and procede



cede now for this time to some other question.

The.xiii.question of the student

The.xv.Chapter.

**A** Man sealed of certayn landes in fee hath a doughter which is his heire apparant, the doughter taketh a husband and they haue issue: & father dyeth sealed, and & husband as sone as he heareth of hys death goeth towarde the land to take possession, and befoze he can come there: hys wife dieth, whether ought he to haue & lande in conscience for terme of hys lyfe as tenaunt by & curtesye because hee hath done & in hym was to haue had possessiō in his wiues life so & he might haue been tenant by & curtesye accordyng to & law, or & he shall neyther haue it by & lawe nor conspence. **D.** It is clearelye holden in & lawe & he shall not be tenaunt by & curtesye in this case because he had not possession in dede. **S.** Ye verely, and yet vpon a possession in lawe a woman shal haue her dower, but no man shall be tenant by & courtely of lande wout hys wyfe haue possession in dede.

**D.** A man shalbe tenant by & curtesye of a rēt though his wife dye befoze & day of paymēt, & in likewise of an aduowso though she dye befoze & auoydaunce. **S.** That is trouthe, for & olde custome and maxime of & lawe is & he shall bee so, but of lād ther is no maxime & serueth hī but hys wyfe haue possession in dede. **D.** And what is the reason & there is suche a Maxime in the

## The.xv.chapter.

law of the rent & of the aduowso rather than of land, whan the husband doth as much as in hym is to haue possession and cannot. **S.** Some assigne the reaso to be because it is impossible to haue possession in dede of  $\frac{1}{2}$  rent or of aduowson before the day of paiement of the rent, or before  $\frac{1}{2}$  auoidaunce of the aduowson. **D.** And so is impossible that he shal haue possession in dede of land if his wife dye so soone that he may not by possibilite come to the lande after her fathers death, and in her lyfe as this case is. **S.**

The law is such as I haue shewed the before & I take  $\frac{1}{2}$  very cause to be for that ther is a maxime serueth for the rente and the aduowson, and not for the landes as I haue sayd before, and as it is sayd in  $\frac{1}{2}$ . viii. Chapter of our fyrst dialoge, it is not alway necessary to assigne a reson or consideration why the maximes of  $\frac{1}{2}$  lawe of Englad wer fyrst ordained & admitted for maximes but it suffiseth that they haue been alway taken for law and that they be neither contrary to the law of reason nor to the law of god as this maxime is not, and therefore if the husbände in thys case be not holpen by conscience he cannot be holpen by the lawe.

**D.** And if the law help him not consciēce cā not help him in this case, for conscience must alway be grounded vpon some lawe, and it cannot in this case be grounded vpon  $\frac{1}{2}$  law of reson nor vpon  $\frac{1}{2}$  law of god, for it is not directly by those lawes  $\frac{1}{2}$  a man shal be tenant by the curtesy, but by the custōm of the realm. And therefore if  $\frac{1}{2}$  custōm heip him not, he cā nothig haue in this case  
by

The.xv.chapiter. fol.85

by conscience, for conscience neuer resisteth & law  
of man nor addeth nothyng to it, but where the  
lawe of man is in it selfe directly agaynst & lawe  
of reason or els the lawe of god, and thā proper-  
ly it cannot be called a law but a corrupcion, or  
where the general groundes of the lawe of man  
worketh in any particuler case agaynst the sayd  
lawes as it may do, and yet the lawe good as it  
appeareth in diuers places in our fyrst dialogue  
in latin, or els, where there is no law of man pro-  
vided for him that hath ryght to a thyng by the  
law of reason or by the law of God. And than  
sometime ther is remedy geuē to execute that in  
conscience, as by a Sub pena but not in al cases  
for sometime it shalbe referred to the conscience of  
the partye, and vpon this ground (that is to say)  
that whan ther is no title geuen by the common  
law, that there is no title by conscience. Ther be  
diuers other cases wherof I shal put som for an  
exāple. As if a reuerciō be graūted vnto one, but  
there is none attournement, or if a newe rent be  
graūted by word wythout dede: there is no re-  
medy by conscience oneles the said grantes were  
made vpo considerations of money or such other  
And in lykewyle where hee & is sealed of landes  
in fee siple maketh a wil therof, the wil is voyde  
in conscience because the ground scructh not for  
him wherby the conscience should take effecte &  
is, to say, the law, and if the tenant make a feoffe  
ment of the lande that he holdeth by prioritie &  
taketh estate agayne & dyeth (his heyre wythin  
age) the lord of whom the lād was firste holden  
by prioritie shal haue no remedy for the body by  
conscience,

## The.xvi chapter

conscience, for the law & fyrst was wyth hym, is now agaynst hym, and therfore conscience is altered in likewise as the law altereth, and diuers and many cases lyke be in the law & were to lōg to rehearse now. And thus me thinketh & if the law be as thou saist: the husband in this case hath neither right by the law nor conscience.

### ¶ The.xliii. question of the student.

### ¶ The.xvi. Chapter.

*Wing but  
upon thought*

**A** Rent is graūted to a mā in fee to perceiue of two acres of land, & after the grauntoure enfeoffeth the graūtee of one of & sayd acres, whether is the whole rent extinct therby in cōsciēce as it is in the lawe. **D.** Thy case is somewhat vncertaine, for it appeareth not whether & graūtoure enfeoffed hym on trust, or & he gaue the acre to hym of hys mere mocyon to the vse of the sayde feoffe, or els & the feoffement was made bpō a bargain, & if it were but onely a feoffement of trust, than I thynke & hole rent abydeth in cōscience though it be extincted in & law, and fyrst & it continueth in & case in conscience, for & part & the graūtee hath to & vse of & grauntour, it is euident for he may not take & p̄ofites of & land & it is agaynst cōsciēce & he should lese both, & in likewise it abydeth in cōscience for the acre & remaineth in & handes of & graūtoz though it be extyncte in & lawe for there was a default in the grauntour & he would make & feoffement too & graūtee as wel as ther was in & graūtee to take  
it

ff. And it is no conscience that of his own default he shuld take so great auayle to be discharged of the hole rent, seynge & the feoffement were made to his own vse. And if & feoffement was made vpon a bargain & a contract betwene thē, thā it is to see whether thei remēbzed the rēt in their bargain, or & they remembzed it not, and if they remēbzed it in their bargain and contract, thā conscience must folowe the bargain as thus if they agreed that the graūtee shuld haue the rent aft the porcion in the other acre than by cōscience he ought to haue it though it be extincted in & lawe. And if they agreed that the hole rent shuld be extinct and made their pize accordynge than it is extinct in law and conscience, and if they clerely forgeat it and made no mencion of it, or for lack of cunning toke the law to be that it should continue in the other acre after the porcion & made their pize according, pondering onely the value of the acre & was sold: than me thinketh, it doth continue in conscience after the porcion, & if the feoffement were made to the vse of the graūtee, than it semeth the hole rent is extinct in law and conscience. S. Than take that to be the case & is to say that the feoffement was made to the vse of the grauntee. D. What is thē thine opinion therein.

S. That the rent should abide in conscience after the porcion for & acre remaineth in the hādes of the grauntour notwithstanding it be extincte in the lawe. Doctoure. Than shewe me thynne opinion in thys & I shall aske thee. Of what lawe is it & grauntes of rent and of suche other



## The.xvi chapter

profites out of landes may be made and that they shal be good and effectual to the grauntes, whether is it by the lawe of reason or by the lawe of God or by the custome and law of the realme. S. I thinke it is by the law of reason, for by ysame reason that a man may geue away al hys landes, he may as it semeth geue away the profites ther of or graunt a rent out of the land if he wil. D. But than by what law is it that a mā may geue away his landes, I trow by none other law but by the custome of the realm, for by statute al alienacions and gistes of landes may be prohibite, & than that reason proueth not that grauntes of y profites of lād or of a rent shuld be good because he may alien the land, if alienacions of lād be by custome and not by the law of reason as I suppose it is, wherof I touched somewhat in our first dialogue in Latin the .xix. chapter. And also yf grauntes shuld haue their effect by the law of reason, than reason would that they should be good by the only word of the grauntour as wel as by his dede, and that is not so, for without dede y graunt of rent is void in the law and so me thinketh that grauntes haue their effect only by the lawe of the realme. S. (Admit it to be so) what meanest thou therby. D. I shal shew the hereafter as I shal shew thee the cause why I thinke the rent is extinct in conscience as wel as in law. And first as I take it the reason why it is extinct in the law is because the rent by the first grant was goyng out of both acres, & was not going part out of the one acre and part out of the other, but the whole rent was goinge out  
of

of both, and than whan the graunte of his owne  
sely wyl take estate in the one acre wherby that  
acre is discharged, than y other acre also must be  
discharged onles it should be appozcioned and y  
law wil not that any appozcionment shoulde be  
in y case, but rather in asmuch as the party hath  
by hys owne act dyscharged the one acre: y law  
deschargeth also the other, rather than to suffer  
the other acre to be charged contrary to y forme  
of the graunte for this rent beginneth all by the  
act of the partie and as I haue heard is called a  
rent againste common righte, wherfore it is not  
faoured in the law as a rent seruice is, and thā  
me thynketh that for asmuch as it is not groun-  
ded by the law of reason that grauntes of rente  
shuld be made out of lād, but by y custome & lawe  
of the realme as I hame saide before, that so in  
lykewise it remaineth to the law and custome of  
the realme to determine how longe suche rentes  
shal continue. And whan the law iudgeth such  
rentes to be voyde: I suppose that so dothe con-  
science also, except the iudgement of the law be  
against the law of reason or the law of God, as  
it is not in this case, for in this case hee that ta-  
keth the feoffement hath profit by the feoffemēt  
and knoweth that he hath such a rent out of the  
lande, and that his purchase shoulde extincite it,  
whereby it appcareth that he assenteth vnto the  
law wherto he was not compelled, and that is  
his own act & his own default so to do, whych  
shal extinct his whole rent as wel in conscience  
as in the lawe. Wnt if he haue no profite of  
the lande or be ygnoraunte that he hath suche a  
rent

## The.xvi.Chapter.

rent out of the land whiche is called ignoraunce of the dede, or if he be ignoraunte that the lawe would extinct his hole rent therby which is called ignoraunce of the law, than me thinketh it remaineth in conscience after the porcion. **S.**

Ignoraunce of the law or of the dede helpeth not but in fewe cases in the law of England. **D.**

And therfore it must be reformed by conscience that is to save by the law of reason for whan the general maximes of the law be in any particuler cases against the law of reason as this maxyme seemeth to be because it excepteth not the  $\bar{y}$  be ignorant though it be an ignorance iuicible that do it not agree with the law of reason. **S.** We thinketh that ignoraunce in this case helpeth little, for whan a man bieth any lande or taketh it of the gift of any other he taketh it at his peryll, so that yf the tittle be not good: ignoraunce cannot helpe, for  $\bar{y}$  bier must beware what hee bieth, and so in this case if the taking of the one acre should extinct  $\bar{y}$  hole rent in conscience if he were not ignorant, so me thinketh it should in likewise extinct it also though he be ignorant of the lawe or of  $\bar{y}$  dede for every man must be compelled to take notice of his own tittle: and out of what land his rent is going and so me thinketh ignoraunce is but little to be considered in this case.

**D.** If a man bye land or take it of the gifte of another: it is reason that he take it wyth the peryll though he be ignorant that another hath the ryght, for it were not standynge with reason  $\bar{y}$  his ignoraunce should extingue the ryght of another, but in this case there is no dout of the right of

of the land, but al the dout is howe the rent shal be ozdred in conscience if he & hath the rent take part of the land, and therin is great diuersite betwene hym & is ignoraunt in the lawe, and hym that knoweth the lawe, and knoweth wel also & he hath a rent out of that lande and other. For I put case & he asked counsaile of the grauntour himselfe therin and he saying as he thought tolde hym that the takyng of the one acre should not extinct the rent but for the porcion, and so he thinking & lawe to be: toke the other acre of his gyft. Is it not reasonable in & case that, & ygnoraunce should saue the rent in conscience.

S. Yes, for ther the grauntour himself is partye to his ignoraunce and is in maner the cause therof. D. And me thynketh al is one yf any other had shewed hym so, or if he asked no counsaile at al, for me thiketh it suffiseth in thys case that he be ignoraunte of the lawe, for why, it is more harde in thys case to proue & rent should be extinct in conscience though he know it shuld be extinct in & law, thā to proue & it continueth in conscience after the porcyon yf he be ygnoraunt, and thou thy selfe were of the same opiniō as it appeareth in the begynning of this present Chapter, but if that opinion were true, it wuld be hard to proue but & the sayd general maxims were holy against reason, and than it wer voyd, but I haue sufficiētly answered therto as me seemeth, and & it is extincte in the lawe and also in conscience, except ignorance helpe it to be appoyoned. And moreouer forasmuch as appoycionment is suffered in the law wher part of the lāde descendeth

## The.xvii.Chapter.

discendeth to the graunte because no default can be assigned in hym some thinketh no default can be assigned in hun in conscience whan he is ignorant of the law or of the dede though such ignorance do not excuse in the law of the realme. S. I am content wyth thyne oppynion in this behalfe at this tyme.

¶ The.xv. question of the student.

## ¶ The.xvii.Chapter.

A Man granteth a rent charge out of two acres of land, and after the graunte our enscoteth Henry Hart in one of the sayd two acres to the vse of the said Henry Hart and of his heires and after the said Henry Hart entending to extinct al the rēt causeth the said acre to be recovered against him to his owne vse in a writ of entre in the post in the name of the graunte and of other after the common course, the graunte not knowing of it, and by force of the said recoverye the other demaundantes entre and dye, liuing & graunte, so that the graunte is leased of all by the surueigneure to the vse of the sayde Henry Hart, whether is the said rent extinct in conscience in part or in al or in no part: D. I am in dout of the lawe in this case. S. In what point. D. whether & hole rēt be going out of the acre & remaineth in & hādes of & grātoz because & grātee cometh to & lād by way of recovery, or & it shalbe extinct in & law, but aff the porciō because & grātee hath not the acre to his owne vse, or that the hole



whole rent shall be extincte in the lawe. S.

The rent can not be hole goyng out of the acre that the grauntour hath, for this recouerie is vpon a fayned title and the grauntoure because he is straunge to it shalbe wel receiued to falsifie it.

But if the recouerye had bene vpon a true title: than it had bene as thou saiest, for if the graantee recouer the one acre agaynst the grauntour vpon a true title, the grauntour shall paye the whole rent out of that lande that remaineth in his had and as to þe vse it maketh no matter to þe grauntoure as to the lawe in whom the vse be, for the possession about the vse extinguieth the whole rent as against him in the lawe as wel as if the possession and vse were both ioyned together in the graantee. D.

Than me thynketh that the layde Henrye Harte is bounded in conscience to paye the graantee the rente after the porcion of that acre þe was recouered, for it can not stande with conscience that he shoulde lose his rent and haue no profit of the lande. S. Than of whom shall he haue the other porcion of his rent.

D. Is the lawe cleare that the acre that the grauntour hath shalbe in this case discharged in the lawe? S. I take the lawe so.

D. And what in Conscience? S. As agaynst the grauntoure me thynketh also it is extincte in conscience for the reason þe thou haste made in the xvi. chapter for it is al one in conscience in this case as agaynst the grauntour whether the recouery were to the vse of the graantee or not specially seying that the grauntour is not pryncipall to the recouery, for the vnitie of possession

## The .xvii. chapter.

is the cause of extinguishtment of the rent against the grauntour both in law and conscience where so euer the vse be but if the grauntour had bene priuie to the cause of the extinguishtment as he was in the case that I put in the last Chapter where the grauntoure enfeofed the grauntee, of one of the acres to the vse of the grauntee, there it is not extyncte in conscience in that acre that remaineth in the handes of y<sup>e</sup> grauntour though it be extincted in the lawe, because he was priuie to the extinguishtment hym selfe, but he is not so in this case, & therfore it is extinct against him in lawe and conscience. And therfore me thinketh that the grauntee shall in conscience haue the whole rente of the sayde Henrye Harte that caused the sayde recouerie to be had in his name, for in hym was all the default, but it is to be vnderstande that in all the cases where it is sayde before in this chapter or in the chapter nexte before that the rent is extincte in the lawe and not in conscience, that in suche case all the remedies that the partie might firste haue had for the rent at the common lawe by distresse assyse or otherwise are determined, and the partie y<sup>e</sup> oughte to haue the rente in conscience shall be driuen to sue for his remedye by Sub pena. W. I am content with thy cōceit in this matter for this time.

The .xvi. question of the  
Student.

The .xviii. Chapter.

The.xviii.chapter. Fo.90.

**A** Villayne is graunted to a man for terme of lyfe, the villayne purchaseth landes to him and to his heires, the ternaunt for terme of lyfe entreth, in this case by the lawe he shall enioye the landes to hym and to his heires, whether shall he dooe so in lyke wyse in conscience.

**D.** He thinketh it fyrste good to see whether it maye stande wyth conscience that one manne maye clayme an other to be his villeyne, and if he maye take from hym his landes and goodes, and put his bodye in pryson if he wyll, it semeth he loueth not his neyghboure as hym selfe that dothe so to hym.

**S.** That lawe hath bene so longe vled in this realme and in other also, and hath bene admitted so longe in the lawes of this realme, and of diuers other Lawes also & hath bene affirmed by Bisshops, Abbots, Priors, and manye other men bothe spirituall and temporall whiche haue taken aduantage by the sayde lawe, and haue sealed the landes and goodes of theyr villeynes thereby, and call it theyr ryghte enheritaunce so to doe, that I thynke it not good now to make a doubt ne to put it in argumente whether it stande wyth conscience or not, and therefore I pray thee, admittynge the lawe in that behalfe to stande in conscience shewe me thyne opinion in the question that I haue made. **D.** Is the lawe cleare that he that hath the villayne but onelye for the terme of lyfe shall haue the landes that he villeyne purchaseth in fee to hym and to his heires. **S.** Ye verely I take it so. **D.** I should haue take he lawe other wyse, for if a seige-

## The. xviii. chapter.

noꝝ be graunted to a man foꝝ terme of lyfe and the tenant attourne, and after ꝑ land eschete and the tenant foꝝ terme of life entreth, he shall haue there none other estate in the lande than he had in the seignoury, and me thinketh that it should be like lawe in this case, and ꝑ the lord oughte to haue in the lande but such estate as he hath in the villeyne. **S.** The cases be not like, foꝝ in ꝑ case of the eschete the tenaunt foꝝ terme of lyfe of the seignoury hath the landes in the lieu of the seignoury, that is to saye, in the place of the seignoury and the seignoury is clerely extincte, but in this case. he hath not the lande in the lieu of the villeyne, foꝝ he shall haue the villeyne still as he had before, but he hath the landes as a profite come by meanes of the villeyne whyche he shall haue in like case as the villeyne had them ꝑ is to saye, of al goodes and catels he shall haue the hole property & of a lease foꝝ terme of yeres he shall haue ꝑ whole terme, and foꝝ terme of life he shall haue the same estate, the lord shall haue the lande durynge the lyfe of the villeyne and of land in fee simple, and of an estate taylor that the villeine hath, the Lord shall haue the whole fee simple, althoughe he had the villeyne but onely foꝝ terme of yeres, so that he enter oꝝ lease accordynge to the law before ꝑ villeyne alien, oꝝ els he shall haue nothing.

**D.** Clerely and if the lawe be so, I thinke conscience foloweth the lawe therin, foꝝ admittynge that a man maye with conscience haue an other manne to be hys villeyne, the iudgemente of the lawe in this case as to termynge what estate the

Lord

The.xix.chapter, Fol.91<sup>a</sup>

Lozde hath in the land by his entre is neither agaynst the lawe of reason nor agaynst the lawe of God, and therfore conscience must folow the law of the realme, but I pray thee let me make a little digression to hear thine opinion in another case somewhat parteynyng to the question, and it is this, if an executour haue a villeine, & is his testatour had for terme of yeres, and he purchaseth landes in fee and the executour entreth in to the lande, what estate hath he by his entre.

S. A fee simple but that shalbe to the behoue of the testatour and shalbe an asselle in his handes.

D. Well then I am contented wyth thy conceit at this tyme in this case and I pray thee procede to another question.

S. For asmuche as it appeareth in this case and in some other before that the knowledge of the law of Englande is ryght necessary for the good orderng. of conscience. I would heare thine opiniõ if a man mistake the lawe what daunger it is in conscience for the mistakynge of it.

D. I praye thee put some case in certayne therof that thou doubttest in, and I will wyth good wyll shewe thee my minde therein, for els it wyll be somewhat longe

or it can be plainely declared, and I woulde not be tedious in this wrytyng.

The.xvii. question of the Student.

The.xix. Chapter.



## The. xix. chapter.

**A** Manne hath a villeyne for terme of lyfe, the villeyne purchaseth landes in fee as in the case of the laste Chapter and the tenaunt for terme of life entreth, and after the villeyne dieth, he in the reuersion pretending that the tenaunt for terme of lyfe hath nothinge in the lande but for terme of life of the villeyne, asketh counsaile of one that sheweth him that he hath good right to the lande, and that he maye lawfullye enter and throughe that counsaile he in the reuersion entreth, by reason of y<sup>e</sup> whiche entre great lutes and expenses folowe in the lawe to the greate hurte of bothe parties, what daunger is thys to hym that gaue the counsaile. **D.** Whether meaneste thou that he that gaue the counsaile gaue it wittingly agaynste the lawe, or that he was ignoraunt of the lawe. **S.** That he was ignoraunt of the lawe for if he knewe the lawe and gaue counsaile to y<sup>e</sup> contrary I thinke hym bound to restitution both to him agaynste whom he gaue the counsaile, and also to his clyent if he would not haue sued but for his counsaile of al that they be dampnified by it.

**D.** Than wyll I yet further aske thee thys question whether he of whom he asked counsaile gaue him self to learning and to haue knowlege of the law after his capacite, or that he toke vpon him to geue counsaile, & toke no study competēt to haue learning, for if he did so I thinke he be bounden in Conscience to restitution of all the costes and damages that he sustayned to whom he gaue counsaile if he would not haue sued but throughe hys counsaile. And also to the other

The.xix.chapter, Fol.92.

other party, but if a manne that hath taken sufficiente studye in the lawe, mistake the lawe in some point & is harde to come to the knowledge of, he is not bounden to suche restitution, for he hath done that in him is, but if such a man knowing the law geue counsaile agaynst the lawe: he is bound in conscience to restitution of costes and damages as thou hast said before, & also to make amendes for the vntrouth.

S. What if he aske counsaile of one that he knoweth is not learned, and he geueth him counsaile in this case to enter by force wherof he entreteth. D. Chan be they bothe bounde in conscience to restitution, that is to saye, the partye if he be sufficient, & eis the counsailloure because he assented and gaue counsaile to the wronge.

S. But what is the counsaillour in that case bounden to, to hym that he gaue counsaile to.

D. To nothyng for there was as much default in hym that asked the counsaile as in hym that gaue it, for he asked counsaile of hym that he knewe was ignorant, and in the other was defaulte for the presumption that he would take vpon hym to geue counsaile in that he was ignorant in.

S. But what if he & gaue the counsaile knew not but that he that asked it had truste in hym that he coulde and would geue him good counsaile and that he asked counsaile for to order well hys conscience howe be it that the trueth was that he coulde not so doe. D.

Chan is he that gaue the counsaile bounden to offer to the other amendes, but yet the other maye not take it in conscience.

S.

Q.iii.

That

## The.xix.chapter.

That were somewhat perilous for haplye he would take it though he haue no right to it, excepte the worlde be well amended. D. What thinkest thou in that amendment. S. I truste euerye man will do nowe in this worlde as they would be done to, speake as they thinke, restore where they haue done wronge, refuse money if they haue no right to it though it be offred them, dooe that they ought for to dooe by conscience, though that they can not be cōpelled to it by no law and y none wil geue counsayl but that they shall thinke to be accordyng to conscience, and if they do to do y they can to resourne it, and not to entermit them selfe with such matters as they be ignozant in, but in suche cases to sende them y aske the counsayle to other that they shal thinke be moze cunnyng than they are.

D. It were very well if it were as thou haste sayde but the moze pitye is, it is not alwaye so, and speciallye there is greate defaulte in geuers of counsayle for some for their owne lucre and profite geue counsayle to comforte other to sue that they know haue no ryght, but I trust there be but fewe of them, and some for dreade, some for fauour, some for malyce, and some vpon considerations & to haue as much done for them another tyme to hyde the trouth. And some take vpon them to geue counsayle in that they be ignozant in, and yet when they know the trouth, wyll not withdraue that they haue misdōne, for they thinke it should be greatly to their rebuke, and such parsons solow not thys counsayle that sayeth. (That we haue vnadvisedly done: let vs wyth

The.xx.chapter. Fol.93.

wyth good aduise reuoke agayne.) S. And if a manne geue counsaile in thys realme after as his learning and conscience geueth hym, and regardeth not the lawes of the realme, geueth he good counsaile. D. If the lawe of the realme be not in that case against the law of god nor against the law of reason he geueth not good counsaile for euery man is bounde to folow the law of the country where he is so it be not agaynst the saide lawes & so may the cases be & he may binde him selfe to restitution. S. At thys tyme I wil no further trouble thee in this question.

The.xviii.question of the student.

The.xx.Chapter.

I f a man of his mere mocion geue landes to Henry Harte and to hys heyres by indeture, vpon condicion that he shal yerely at a certayne day pay to John at Style out of the same lande a certayne rent, and if he do not & then it shalbe lawefull to the sayd John at Style to enter. &c. if the rente in this case be not payed to John at Style, whether may the sayde John at Style enter into the landes by conscience though he maye not enter by the lawe. D. May he not enter in thys case by the lawe, lithe the wordes of the indenture be that he shall enter. S. No verelye for there is an auncient maxime in the lawe that no man shall take aduantage of a condicion but he & is partye or priue to the condicion, and thys manne is not partye nor priue wher-

## The. xx. chapter.

wherefore he shal haue none aduantage of it.

**D.** Though he can haue none aduantage of it as party yet because it appeareth evidently that the intente of the geuer was that if he were not payed of the rent that he should haue the lande.

It semeth that in conscience he ought to haue it though he can not haue it by the lawe. **S.**

In many cases the entent of the party is boyde to all intentes if it be not grounded accordynge to the lawe. And therfore if a man make a lease to another for terme of lyfe, & after of his mere motion he confirmeth hys estate for terme of life to remayne after his deathe to another and to hys heyes, in this case that remayndre is boyde in lawe and conscience, for by the Lawe there can no remayndre depende vpon no estate but that the same estate beginneth at the same tyme that the remaynder dothe, and in this case the estate began before and the confirmacion enlarged not his estate nor gaue hym no newe estate, but if a lease be made to a manne for terme of an other mannes lyfe, and after the lessour onely of his mere motion confirmeth the lande to hys lesse for terme of his owne life, the remayndre ouer in fee, this is a good remayndre in the lawe & conscience, and so me thinketh the intente of the partye shall not be regarded in the same. **D.**

And in the first case that thou had put, me thinketh though he it passe not by waye of remayndre that yet it shall passe as by waye of graunte of the reuercion, for euery dede shall be taken moste strong against & grauntour & the takynge of the dede in this case is an attournament in it selfe. **S.**



**S.** That can not be, for he in the remaynder is not party to  $\S$  dede and therfore it can not be taken by way of graūt of  $\S$  reuercion, for no graūt can be made but to hym  $\S$  is partye to the dede except it be by way of remayndre, & therfore if a manne make a lease for terme of lyfe, and after the lessour graunt to a straunger that the tenant for terme of lyfe shall haue the lande to hym and to hys heyyres, that graunt is voyd if it be made onely of his mere mocion without recompence. And in likewyse if a man make a lease for terme of lyfe, and after graunte the reuercion to one for terme of lyfe, the remaindre ouer in fee, and the tenaunt attourneth to him that hath the estate for terme of lyfe, onely entēdyng  $\S$  he only should haue aduantage of  $\S$  graunt his entent is voyd, and both shal take aduantage therof, and the attournement shalbe taken good accordyng to the graunt; and so in this case thoughe the feoffoure intended that yf the rente were not payed: that the straunger should enter, yet because the lawe geueth him no entre in  $\S$  case that intent is voyd and the same straunger shal neyther enter into  $\S$  lande by lawe nor conscience. **D.** What shall be done wyth that lande as thou thynkest after the condicion broken. **S.** I thinke that the feoffoure in thys case maye lawfullye reentre for whan  $\S$  feoffement was made vpon condicio  $\S$  the feoffe would pay a rent to a straunger, in those wordes is concluded in  $\S$  law that if  $\S$  rent were not payed to the straunger  $\S$  the feoffoure should reēter for those wordes vpon condicio, imply so much in the lawe though it be expressed.

And

## The. xxi. chapter.

And than whan the feoffour went further & said  
if the rente were not payed that the straunger  
should enter, those wordes were voide in law,  
and so the effect of the dede stode vpon the firste  
wordes wherby the feoffour may reenter in law  
& conscience but if the first wordes had not bene  
cōdicional I wold haue holdē it & greater dout.  
D. I praye thee put the case therof in certayne  
with such words as be not condicionall & I may  
the better perceiue what thou meanest therein.

### The. xix. question of the Student.

#### The. xxi. Chapter.

When maketh a feoffemēt bi dede indented, &  
by the same dede it is agreed that the feoffe  
shal pay to A. B. & to his heirs a certain rēt yere  
ly at certayne dayes, and if he pay not the rent  
then it is agreed & A. B. or his heires shal enter  
into the lande, & after the feoffe payeth not the rente  
than the question is who ought in conscience to  
haue thys lande and rente. D. Or we argue  
what conscience wyll, let vs knowe firste what  
the lawe wyll therein. S. I thynke that by  
the lawe neither the feoffour ne yet the sayd A.  
B. shal neuer enter into the lande in this case for  
not paymēt of the rent for there is no reēter in thys  
case geuen to the feoffour for not paymēt of the rent  
as there is in the case next before, and the enter  
is geuen to the sayd A. B. for not payment thereof  
is voide in the Lawe because he is estraunge to the  
the

the dede as it appeareth also in the next chapter before. And therfore me thinketh that the greatest doubt in this case is to se to what vse thyg feoffemente shalbe taken.

**D.** There appeareth in this case as thou haste put it, no consideracion ne recompence geuen to the feoffour, wherupon any vse may be deriued, and if the case be so in dede and that the feoffour declared neuer his mynde therin, to what vse shall it than be taken.

**S.** I thynke it shalbe taken to be to the vse of the feoffe as longe as he payeth y<sup>e</sup> rent, for there is no reason why y<sup>e</sup> feoffe shoulde be busied with payment of the rent hauyng nothing for hys labour ne it maye not conueniently be taken y<sup>e</sup> the intente of the feoffoure was so, except he expessed it, and than it muste be taken y<sup>e</sup> he intended to recompence the feoffe for the busines that he shoulde haue in the paymente ouer, and by the wordes folowinge his entent appeareth to be so as me thinketh, for if the rente were not payed he would y<sup>e</sup> A. B. shoulde enter, and so it semeth he intended not to haue anye vse hym selfe and thus as me semeth this case should varye fro the common case of vses, y<sup>e</sup> is to saye, if a man seased of lande make a feoffement therof: & it appereth not to what vse the feoffemēt was made ne it is not vpo anye bargaine or other recompence, thē it shalbe taken to be to the vse of the feoffour except y<sup>e</sup> cōtrary cā be proued by some bargayne or other like, or y<sup>e</sup> his entent at the tyme of y<sup>e</sup> liuery of sealon was expessed that it shoulde be to the vse of the feoffe or of some other, and than it  
shal

## The. xxi. chapter.

shall go accordyng to hys entent, but in this case me thinketh it shalbe taken that his entent was & it shoulde first be to the vse of the feoffee for the cause before rehearsed excepte the contrarye can be proued, and so the knowledge of & entent of the feoffoure is & greatest certayne for knowledge of the vse in thys case as me semeth, but whan the feoffour goeth further and sayeth that if the rente be not payed: than the sayde. **A. B.** shoulde enter into the lande, than it appeareth & hys entent was that the rente shoulde cease, and **J. A. B.** shoulde enter into the lande, and thoughe he maye not by those wordes enter into & lande after the rules of the lawe, and to haue frecholde yet those wordes seme to be sufficiente to proue that the entent of the feoffoure was & he should haue the vse of the lande, for sith he had & rente to hys owne vse, and not to the vse of the feoffour, so it semeth he shall haue the vse of & lande that is assygned to hym for that payment of the rent. **D.** But I am somewhat in doubt whether he hadde that rent to his owne vse, for the intent of the feoffoure myght be that he shoulde pay the rent for him to some other or some other vse might be appoynted therof by the feoffoure. **S.** If such an entent can be proued: thā & intent muste be obserued, but we be in the case to wete to what vse it shalbe taken if the entente of the feoffour can not be proued, & than me thinketh it can not be otherwyle taken, but & it shall be to the vse of hym to whom it shoulde be payed, for thoughe it be called a rente, yet it is no rente in the lawe, ne in the lawe he shall neuer haue re-

medy for it, though he it were assigned to hym and to hys heires wythout condicion neyther by distresse, by assise, by writ of annuite, nor otherwise but he shalbe driven to sue in the chauncery for his remedy, and the when he sueth in y<sup>e</sup> chauncery he muste surmit & he ought to haue it by conscience, and that he can haue no remedye for it in the lawe. And than sith he hath no remedye to come to it but by waue of conscience it semeth it shalbe taken that whan he hath recovered it that he ought to haue it in cōscience and & to his own vse without the contrarpe can be proued, and if the contrarpe can be proued: and that the entente of the feoffour mas that he shoulde dispose it for him as he shoulde appoynt than hath he the rent in vse to another vse, and so one vse shoulde be dependyng vpon another vse, whiche is seldome sene and shall not be intended til it be proued, & so sith no such matter is here expressed: me thynketh the rent shalbe taken to be to the vse of him that it is payed to, and the lande in likewise that it is appointed to him for not payment of & sayd rente shall be also to his vse, howe thynkest thou will conscience therein.

D. I thynke that as thou takeste the Lawe nowe that conscience (in this case) & the lawe be al one, for the lawe searcheth the same thyng in thys case to knowe the case that Conscience dothe, that is to saye, the entente of the feoffour and therfore I would moue thee further in one thyng.

S. What is that. D. That sith the entente of the feoffour, shalbe so muche regarded in thys case: whye it oughte not also

to



## The.xxii.chapter.

to be as much regarded in the case that is in the last Chapter next before this where the wordes be condicionall, and geue the feoffoure a tytle of reentre, for me thynketh that though the feoffour may in þe case reentre for the condicion broke that yet after hys reentre he shal be seased of the lande after his entre to the vse of hym to whom the lande was assigned by the sayd indenture for lacke of payment of the rent because the intente of the feoffoure shall be taken to be so in that case as well as in this. And I pray thee let me knowe thy minde what diuersitye thou putteste betwene them. S. Thou driuest me now to a narrow diuersitie, but yet I wyl answer thee therin as well as I can. D. But firste or thou shewe me that diuersitye: I praye thee shew me how vses began and why so much land hath bene put in vse in this realme as hath bene. S. I wil with good will say as me thinketh therin.

Howe vses of lande first beganne and by what lawe and the cause why so muche lande is put in vse.

## The.xxii.Chapter.

**V**Ses were reserved by a secondary conclusion of the law of reason in this maner, when the generall custome of proparty, wherby euery manne knew his owne good fro his neighbours was brought in among the people. It folowed of reason that such landes and goodes as a manne hadde, ought not to be taken fro hym but by hys assent

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assent or by order of a law, and than sith it is so & every man & hath landes hath thereby two thinges in him, & is to saye, the possession of the lande which after & lawe of England is called & frak-  
tenemente or & free holde, and & other is auctho-  
ritie to take thereby & profitess of & land, where-  
fore it foloweth & he & hath lande and intendeth  
to geue onelye & possession and freeholde thereof  
to another and to kepe & profitess to hym selfe  
oughte in reason and conscyence to haue & pro-  
fitess, secyng there is no lawe made to prohibite,  
but & in conscience suche reseruacion maye bee  
made. And so whan a manne maketh a feoffment  
to another and intendeth & hee hym selfe shall  
take & profitess than & fesse is sayde sealed to hys  
vse & so enfeoffed hym, & is to saye, to & vse & he  
shall haue & possession and freeholde thereof as  
in & lawe to & intente & the feoffoure shall take  
& profitess, and vnder thys maner as I suppose  
vses of lande fyrste beganne. D. It semeth  
& the reseruinge of suche vse is prohibite by the  
lawe, for if a manne make a feoffment and re-  
serue the profitess or anye partes of & profite as  
& grasse, woode or suche other, & reseruacion is  
voide in & lawe, and me thinketh it is all one to  
saye that the lawe iudgeth suche a thyng yf  
it be done to bee void, & & the lawe prohibiteth &  
& thing shall not be done. S. Trowth it is &  
such reseruacion is voide in & lawe as thou saist  
and & is by reason of a maxime in & lawe & wyl-  
leth & suche reseruacion of part of & same thyng  
shall bee iudged voide in & lawe, but yet & lawe  
doth not phibit & no such reseruaciō shalbe made

## the.xxii. Chapter.

but yf it be made it iudgeth of what effecte it shall bee & is to saie, & it shall bee voyde, and so hee & maketh suche reseruacion offendeth no law thereby, ne breaketh no lawe thereby, and therefore & reseruacion in conscience is good but yf it were prohibite by statute & no man should make suche reseruacion ne that no feffement of truste shoulde bee made but & all feffementes shoulde be to & vse of him to whom possession of & lande is geuen than & reseruacion of suche vse agaynst & statute shoulde bee voyde because it wer against & lawe and yet suche a statute shoulde not bee a statute agaynst reason because suche vses were first grounded and reserued by & law of reason, but it should pꝛeuent & law of reason and should put away & consideraciō wherupon & law of reason was grounded before & statute made. And than to & other question, & is to say, why so much lande hath bene put in vse, it wil be somewhat long and paraduenture to some tedious to shew al & causes particularly, but & very cause why & vse remained to & feoffe notwithstanding hys owne feffement or fine and sometyme notwithstanding a recovery against him is all vppon one consideracion after & cause and entent of & gyft, fyne or recovery, as is aforesaid. D. Though reason may serue & vpon a feffement a vse maye be reserued to & feoffour by & intent of & feoffour against & fourme of his gift as thou hast sayde before, yet I maruaile howe suche an vse maye be reserued against a fine & is one of the highest recordes that is in the law, and is taken in the lawe of so hyghe effecte chat it shoulde make an  
ende

ende of all strifes, or agaynste a recovery & is ordeyned in the lawe for them that bee wronged to recouer theyr ryghte by, and me thinketh & great inconuenience and hurte may folow whan suche recordes may so lightly bee auoided by a secreete intende or vse of & parties and by a nude and bare auerment and matter in dede, and specially sith such a matter in dede may be alledged & is not true whereby maye rise greate strife betwene the parties, and great confusion and vncertaine in & law but neuerthelesse sith oure intēt is not at this time to treat of & matter I pray the touch shortly som of & causes why there hath ben so many psons put in estate of landes to the vse of other as there hath ben, for as I here saye few men be sole seased of their owne lande. **S**

There hath ben many causes therof, of the which some be put away by diuers statutes, & some remain yet, wherfore thou shalt vnderstād & some haue put their land in feoffement secretlye to the intende & they & haue ryghte to the lande should not knowe againste whom to byng theyr accio, and & is much what remedied by diuers statutes & geue accions againste parnours and takers of the profits. And sometime suche feffementes of trust haue ben made to haue maintenaunce & be- ring of their feoffes, whiche paradventure were great lordes or rulers in the countrey, and therfore to put awaye suche mayntenaunce: treble damages bee geuen by statute agaynste them that make suche feoffementes for mayntenance. And sometyme they were made to the vse of **W**ortmaine whiche mighte than bee made with-

## the.xxii.Chapter.

oute forfaiture though it were prohibyte that & frecholde might not be geue in mortmain. But & is put away by & statute of Richard & seconde And sometyne they were made to defraude the lordes of wardes,reliefes, harriots,and of the landes of their velleins, but those poyntes bee put away by diuers statutes made in the tyme of king Henry the.vii. Sometime they wer made to auoide execucions vpon statute Staple, statute Marchant and Recognisaunce, and remedy is prouided for & & a man shall haue execucion of all suche landes as any parson is seised of to the vse of hym that is so bounde at the tyme of execucion sued in &.xix. yere of H.the.vii. And yet remain scoffemêtes, fines, and recoveries in vse for many other causes, in maner as many as ther did befoze the sayde estatute. And one cause is why they be yet thus vsed is to put away tenācy by & curtesy and titles of dower. Another cause is for & landes in vse shall not bee put in execucion vpon a statute Staple statute marchāt, nor recognisaunce, but suche as bee in & handes of & recognisor at & tyme of & execuciō sued. And sōetime landes bee put in vse & they shoulde not bee put in execucion vpo a writ of Extendi facias ad valenciā. And sōetime such vses be made & he to whose vse. &c. may declare his wil theron & sometime for surety of diūs couenantes in indētures of mariage, & other bargaines, & these two laste articles be & chief & pꝛincipal causes why so much land is put in vse. Also landes in vse be no asses neyther in a formedon nor in an accion of Dette agaynst the heyre:ne they shal not be put



in execution by an Elegit sued vpon a recouere as  
some men say, & these bee & very chiefe causes as  
I now remember why so much land standeth in  
vse as there dothe, and all & sayde vses be refer=  
ued by the intente of the parties vnderstande or  
agreed betwene the, and & many tymes directe=  
ly against the wordes of feoffment fyne, or reco  
uere, and that is done by the lawe of reason as  
is aforesaide. D. May not an vse be assigned  
to a straunger as well as to bee reserued to the  
feoffour if the feoffour so appointed it vpon his  
feoffment. S. Yes as well, and in lyke wyse  
to the scoffe and & vpon a free gifte without any  
bargain or recompence if the feoffour so wyll. D.  
What if no fesseint be made but & a man graunte  
to his fesse that fro thence forth he shal stand sei=  
sed to his owne vse, is not & vse chaiged though  
there bee no recompence. S. I thynke yes  
for there was an vse in Esse before the gyfte  
whiche he maye as lawfully geue awaye as hee  
might the lande if he had it in possession. D. And  
what if a man being seised of land in fee graunte  
to another of his mere mocion without bargain  
or recompence & he fro thenceforth shalbee seised  
to the vse of the other, is not that graunt good?  
S. I suppose that it is not good, for as I take  
the lawe: a man cannot commerce an vse but by  
liuery of seison or vpon a bargayn or some other  
recompence. D. I hold me contented wpyth  
that thou halste said in this Cha. for this time &  
I pray the shew me what diuersite thou putttest  
betwene those two cases that thou halste beefore  
rehearsed in the .xx. Chapter and in the .xxi.

## the .xxiii. Chapter.

Chapter of this presente booke. S. I wyll  
with good wyll.

**T**he diuersitie betwene two cases here  
after folow, wherof one is put in the  
xx. Chapter, and the other in  
the .xxi. Chapter of this  
presente booke.

## **T**he .xxiii. Chapter.

**T**he firste case of the sayde twoo cases is thys.  
A man maketh a feoffment by dede indeted vpon  
a condicio & the feoffe shal pay a certain rēt  
perely to a stranger. &c. & if he pay it not: & it shal  
be lawfull to & stranger to eter into & lande. In  
this case I saide before in & .xx. Chapter that the  
straunger might not enter because & he was not  
priuy vnto & condicion. But I saide & in & case  
& feoffour might lawfully reentre by & first wor-  
des of & endenture because they implie a cōdy-  
cion in & law and & the other wordes (& is to say)  
that the straunger should enter be voide in lawe  
and conscience. And therefore I said farther &  
whan & feoffour had reentered that he was sea-  
led of & lande to his owne vse and not to & vse  
of the straunger, though his entente at the ma-  
kyng of the feoffment were that & stranger aff  
his entre should haue had the lande to his owne  
vse if he myght haue entred by the law. And the  
cause why I thinke & the feoffoure was sealed  
in that case to his owne vse I shall shewe thee  
afterward. The secōd case is this. A mā maketh  
a feoffment

a feffement in fee, and it is agreed vpō & feffemt  
 & the feoffe shall pay a yerely rent to a straunger,  
 and if he pay it not: & than & straunger shal entre  
 into & lande. In this case I saide as it appereth  
 in & saide.xxi.Chapter, & if the feoffe payde not  
 & rente: & the straunger shoulde haue the vse of  
 & lande thoughe hee maye not by the rules of &  
 lawe enter into the lande, and & diuersitye bee-  
 twene & cases me thinketh to be this. In & fyrst  
 case it appeareth as I haue said befoze in & said  
 xx.chapiter, & the feoffour might lawfully reent  
 by & lawe for not payment of & rent, and thā whā  
 he entred accordyng: he by & entre auoyded the  
 first liuery of sealon in so muche & after & reent  
 hee was seased of the lande of lyke estate as hee  
 was befoze the feoffement. And so remayneth  
 nothyng, whereupon & straunger might ground  
 his vse, but onely & bare graunte or entente of  
 the feoffoure whan he gaue the lande to & feoffe  
 vppon condicion & hee shoulde paye the rente to  
 the straunger, and if not, & it shoulde bee lawe-  
 full to the straunger to enter for & feoffemente  
 is auoyded by & reent of the feoffour as I haue  
 sayde befoze, and as I sayde in the last chapiter,  
 as I suppose a nude or bare graunte of hym  
 is seased of lande is not sufficiente to begynne an  
 vse vppon. **D.** A bare graunte may chaunge  
 an vse as thou thy selfe agreedst in the last Cha-  
 piter, why than maye not an vse as well bee-  
 gynne vppon a bare graunt. **S.** Whan an  
 vse is in Esse hee & hath the vse may of his mere  
 mocion geue it away yf he wyl withoute recom-  
 pence as he might & lande if he had it in possession  
**R.iiii.** but

## the .xxiii. Chapter.

but I take it for a grounde & hec cannot so be-  
ginne an vse without a liuerey of seyson or vpon  
a recōpence or bargain & y there is such a ground  
in y law & it may not so begin it appeareth thus,  
it hath ben alway holden for law y if a mā make  
a dede of feoffment to another and deliuer the  
dede to him as his dede, & in y case he to whome  
y dede is deliuered hath no tytle ne medlynge &  
the lande afoze liuerey of seyson bee made to him  
but onelye that hee mape enter and occuppe the  
lande at the wpll of the feoffoure, and there is no  
booke saythe that the feoffoure in that case is  
scyled therof befoze liuerey to the vse of y feoffe.  
And in likewise if a manne make a dede of fesse-  
ment of two acres of lande that lye in two shires  
intēding to geue thē to y feoffe and maketh liue-  
rey of seyson in y one shire & not in y other, in this  
case is it commonly holden in bokes y the dede is  
voyde to y acre where no liuerey is made except  
it lye within y vierre saue onelye y he may enter  
and occuppe at will as is afozesayde, & ther is no  
booke y saithe y the feoffe shoulde haue the vse  
of the other acre, for yf an vse passed thereby  
than were not y dede voyde to all intentes & yet  
it appeareth by y woordes of the dede y the feof-  
foure gaue y landes to the feoffe, but for lacke of  
liuerey of seyson y gift was voyde & so me thyn-  
keth it is here wout liuerey of seyson be made ac-  
cording. But in y second case of y sayd two cases  
y feoffe may not recenter for non paymente of the  
rent and so y first liuerey of seyson continueth &  
standeth in effect, and therupon the first vse may  
well begynne and take effecte in the straunger:  
of

of the lande whan  $\text{\textcircled{v}}$  rente is not payde vnto him accordyng to  $\text{\textcircled{v}}$  firste agremente. And so me thinketh  $\text{\textcircled{v}}$  in the firste case  $\text{\textcircled{v}}$  vse is determined because  $\text{\textcircled{v}}$  livery of seyson whereupon it commēced is determined, and  $\text{\textcircled{v}}$  in  $\text{\textcircled{v}}$  seconde case the vse of  $\text{\textcircled{v}}$  lande taketh effecte in  $\text{\textcircled{v}}$  straunger, for not paymente of  $\text{\textcircled{v}}$  rente by the graunt made at the first liverye whiche yet continueth in his effecte, and this me thinketh is  $\text{\textcircled{v}}$  diuersitie betwene  $\text{\textcircled{v}}$  cases.

D. Yet notwithstanding the reason that thou hast made, me thinketh  $\text{\textcircled{v}}$  if a manne seised of landes maketh a gift thereof by a nude promyse without any livery of seison or recōpence to him made: and graunt  $\text{\textcircled{v}}$  he shalbee seised to hys vse,  $\text{\textcircled{v}}$  thoughe  $\text{\textcircled{v}}$  promise bee voide in the lawe,  $\text{\textcircled{v}}$  yet neuerthelesse it muste holde and stande good in conscyence and by  $\text{\textcircled{v}}$  law of reason, for one rule of the lawe of reason is,  $\text{\textcircled{v}}$  we maye dooe nothyngge againste  $\text{\textcircled{v}}$  trouthe, and lithe  $\text{\textcircled{v}}$  trouthe is  $\text{\textcircled{v}}$  the owner of the grounde hath graunted  $\text{\textcircled{v}}$  hee shalbee seised to the vse of the other:  $\text{\textcircled{v}}$  graunt muste nedes stande in in effect or els there is no trouthe in the grauntour. S. It is not agaynste the trouthe of  $\text{\textcircled{v}}$  grauntour in this case thoughe by  $\text{\textcircled{v}}$  graunte he bee not seised to  $\text{\textcircled{v}}$  vse of the other, but it proueth that he hath graunted, that the lawe will not warrant him to graunt, wherfore his graunte is voide. But yf  $\text{\textcircled{v}}$  grauntoure had gone farther and saidethat hee would also suffer the other to take  $\text{\textcircled{v}}$  profytes of the landes wyth oute let or other interrupcion, or that he woulde make him estate in  $\text{\textcircled{v}}$  land whā he shold be required, than I thinke in those cases he wer bounde



## the.xxiii.Chapter.

in conscience by þ rule of þ lawe of reason þ thou  
hast remembred to parfournie them, if hee inten-  
ded to be bounden by his promise for els he shold  
go against his own trowth & againste hys owne  
promise. But yet it shall make no vse in þ case,  
noz he to whom þ promise is made shall haue no  
accion in þ law vppon that promise although it  
be not parfourned, for it is called in the lawe a  
nude oz a naked promise. And thus me thinketh  
þ in the first case of þ said two cases the graunte  
is now auoyded in the law by þ reentre of þ fef-  
four and þ the feffour is not bounden by his graunt  
neyther in lawe noz conscience, but in the second  
case he is bound, so þ the vse passeth from him as  
I haue said befoze. D. I holde me contente  
with thy conceite for this time, but I pray the  
shew me somewhat moze at large what is taken  
for a nude contracte oz a naked promise in the  
lawes of Englande and where an accion maye  
lye thereuppon and where not. S. I wyl do  
good wyl saye as me thinketh therein.

¶ What is a nude contract oz naked  
promise after the lawes of Eng-  
lande, and whether any accion  
maye lye thereuppon.

## ¶ The.xxiiii.Chapiter.

Fyrst it is to be vnderstande þ contractes bee  
grounded vppon a custome of þ realme and by  
the lawe þ is called (*Jus gentium*) and not dy-  
rectly by the law of reason, for whan al thinges  
were

were in commō: it neded not to haue contractes,  
but aff pproparty was bzought in, they wer right  
expedyent to all people, so ꝑ a man myghte haue  
of his neighbour ꝑ he hadde not of his owne, and  
ꝑ coulde not bee lawfullpe but by his gyfte, by  
waye of lending, conçoꝝde, oꝝ by some lease, bar-  
game oꝝ sale, and suche bargaynes and sales bee  
called contractes and be made by assent of ꝑ par-  
ties vpon agrement betwene the of goodes oꝝ la-  
des foꝝ money oꝝ foꝝ other recoꝝpence, but of mo-  
ney vsuel, foꝝ money vsuel is no contracte. Also  
a conçoꝝde is properly vpon an agremente be-  
twene ꝑ parties & diuers articles there, some ri-  
sing on ꝑ one part & som on ꝑ other as if John at  
Stile letteth a chāber to Henry Hart & it is far-  
ther agreed betwene the ꝑ the said Henry Hart  
shal go to borde with ꝑ said John at Stile and ꝑ  
said Henry Hart to pay foꝝ ꝑ chamber & bording  
a certain sūme. &c. this is pperly called a cōcoꝝd  
but it is also a contract & a good accion lieth vpo  
it, howbeit it is not much argued in the lawes of  
England what diuersitie is betwene a contract,  
a conçoꝝd, a promise, a gift, a lone, oꝝ a pledge, a  
bargain, a couenaunt, oꝝ suche other, foꝝ ꝑ intēt  
of ꝑ lawe is to haue ꝑ effecte of ꝑ matter argu-  
ed and not the termes, and a nude contracte is  
where a manne maketh a bargayne, oꝝ a sale of  
hys goodes oꝝ landes withoute any recompence  
appointed foꝝ it. As yf I saye to another I sell  
thee all my lande oꝝ all my goodes and nothing  
is assigned that the other shall geue oꝝ paye foꝝ  
it that is a nude contracte, and as I take it: it  
is voide in the lawe and conscience, and a nude

oꝝ

a nude con  
fiaw

## the.xxiiii.Chapter.

or naked promise is wher a mā promiſeth another to geue him certain money ſuch a day or to build him an houſe, or to do him ſuch certain ſeruiſe, & nothyng is aſſigned for the money, for the building, nor for the ſeruiſe, theſe bee called naked promiſes, becauſe there is nothing aſſigned why they ſhoulde be made, & I thinke no acciō lyeth in thoſe caſes though they bee not perfourmed. Alſo yf I promiſe to another to kepe hym ſuch certain goodes ſafely to ſuch a time, & aft I reſuſe to take them there lyeth no acciō agaynſte me for it, but if I take thē & aft they be loſt or e- paired throught my negligente keepyng, there an acciō lyeth. D. But what oppinion holde they ſhould be learned in y law of Englande in ſuche promiſes ſhould be called naked or rude promiſes, whether dooe they holde ſhould they that make the p miſe be bounden in conſcience to performe their pmiſe though they cannot be cōpelled therto by the lawe or not. S. The booke of y lawe of England treateth litle thereof, for it is lefte to the determinacion of Doctours, and therfore I pray the ſhewe me ſomwhat now of thy minde therein and then I ſhal ſhewe the therein ſomwhat of y myndes of diuers ſhould be learned in the lawe of y realme. D. To declare y matter plainly after the ſaying of Doctours: it woulde aſke a long time & therfore I will touche it brieſly to geue y occaſion to deſire to here more therein here after. Firſte thou ſhalte vnderſtande y there is a promiſe y is called an aduowe, and y is a pro- miſe made to godde and he y doth make ſuche a vowe vppon a deliberate mynde entendyng to perfourme

mak. 9  
m. 16

m. 16

parfourme it is bounde in conscience to dōoe it  
 though it bee onely made in y heart without pro  
 nouncynge of wordes, and of other pmisses made  
 to man vpon a certain consideracion, if y pmyse  
 be not againsty law. As if A. promise to geue. **W**  
**xx.** pound because he hath made him such a house  
 or hath lent him suche a thing or such other tyke,  
 I thinke him bound to kepe his promise. But  
 yf his promise bee so naked y there is no maner  
 of consideracion why it shoulde bee made than  
 I thinke him not bounde to parfourme it for it  
 is to suppose y there was some erroure in y ma-  
 king of y promise, but yf such a promise be made  
 to an vniuersitte, to a citie, to the churche, to the  
 clergie, or to poore men of suche a place, and to y  
 honour of godde or suche other cause like, as for  
 maintenaunce of learnyng, of y common welth,  
 of y seruice of god, or in relief of pouerty or such  
 other than I thinke y he is bounden in conscy-  
 ence to parfourme it though there bee no consy-  
 deracion of worldly profit y the grauntour hath  
 had or intendeth to haue for it, and in all such p-  
 nuses it muste bee vnderstande y hee y made the  
 promise intended to bee bounde by his promise,  
 for els commonlye after all Doctours he is not  
 bounde, vnlesse he were bounde to it before hys  
 promise. As yf a manne promise to geue his fa-  
 ther a gowne y hath nede of it, to kepe fro colde,  
 and yet thynketh not to geue it hym, neuerthe-  
 lesse hee is bounde to geue it for hee was bounde  
 therto before. Also after some Doctours a man  
 may bee excused of suche a promise in conscience  
 by casualtie y commeth after the promise if it bee  
 so

## the .xxiiii. Chapter.

so if hee had knowen of  $\S$  casualtye at the ma-  
 kinge of  $\S$  promise hee woulde not haue made it.  
 And also suche promises if they shall binde they  
 muste bee honest, lawfull, and possible, and elles  
 they are not to bee holden in conscience though  
 there bee a cause &c. And if  $\S$  promise bee good  
 and with a cause though no worldlye profyte  
 shall growe thereby to him  $\S$  maketh the promise  
 but only a spiritual profit as in the case before re-  
 hearded of a promise made to an vniuersitie, to a  
 Citie, to  $\S$  church, or such other and with a cause  
 as to  $\S$  honour of god, other there is moste com-  
 monlye holden  $\S$  an accion vppon those promy-  
 ses lieth in the lawe Canon. **S.** Whether do-  
 est thou meane in suche promises made to an U-  
 niuersitie, to a Citie, or to suche other as thou  
 hast rehearsed before and with a cause, as to the  
 honour of god or such other. That the party shal  
 be bound by his promise if he intended not to be  
 bounden therby ye or nay. **D.** I think nay no  
 moze than vpon promises made vnto commō par-  
 sons. **S.** And than me thinketh clerely  $\S$  no ac-  
 cion can lye against him vpon such promises, for  
 it is secrete in his owne conscience whether he e-  
 tended for to be bound or nay. And of  $\S$  intent in-  
 ward in the hert: mans law cannot iudge, and  $\S$   
 is one of  $\S$  causes why the law of god is necessa-  
 ry ( $\S$  is to say) to iudge inward things, and if an  
 acciō should lye in  $\S$  case in the law Canon, thā  
 should the law Canō iudge vpon  $\S$  inward intēt  
 of  $\S$  heart, which can not bee as me semeth. And  
 therefore after diuerse  $\S$  be learned in the lawes  
 of the realme all promises shall bee taken in this  
maner



maner, that is to saye: If hee to whome the promyse is made: haue a charge by reason of the promise whiche hathe also parfourned: than in y<sup>e</sup> case hee shall haue an accion for that thyng & was promised though hee that made & promise haue no worldye profit by it. As if a manne saye to another heale suche a poore manne of his discaise, or make an hygge waye and I shal geue thee thus muche, and yf he dooe it, I thynke an accion lyeth at the common lawe. And mozeouer though the thyng & hee shall doe be al spirituall yet if hee parfourn it I thynke an accion lyeth at the common lawe. As yf a manne saye to another, faste for me all the nexte Lente and I shall geue thee .xx. pounde and hee parfourneth it, I thinke an accion lyeth at y<sup>e</sup> common lawe. And in likewyse if a manne saye to another, marrye my doughter and I wyll geue thee .xx. pounde. Upon this promise an accion lieth if he marry his doughter and in this case he cannot discharge the promise though he thought not to be bounde thereby, for it is a good contract, and he may haue *Quid pro quo*, & is to say & preferment of his doughter for his money. But in those promises made to an Uniuersite or such other as thou hast remembred before, with such causes as thou hast shewed, & is to say, to y<sup>e</sup> honour of god or to y<sup>e</sup> encrease of learning, or suche other like where y<sup>e</sup> party to whome the promyse was made is bounde to no newe charge by reason of the promyse made to hym but as hee was bounde to before, there they thynke & no accion lyeth agaynste hym though hee parfourn not his

## the .xxiiii. Chapter.

his promyse, for it is no contracte, and so his owne conscience muste bee his iudge whether he intended to be bound by his promise or not. And yf he intended it not: than he offended for hye dissimulation onelye but yf hee intended to bee bounde, than yf he perfourme it not: vntrouthe is in him, and hee proueth himselfe to bee a lyer, which is prohibited as well by  $\forall$  lawe of god as by  $\forall$  lawe of reason, and farthermore many  $\forall$  bee learned in  $\forall$  lawe of Englande holde  $\forall$  a manne is as nuiche bounden in conscience by a promyse made to a common parson if he intended to bee bounde by his promise as he is in the other cases  $\forall$  thou haste remembred of a promise made to the church, or to  $\forall$  clergy or such other, for they saye  $\forall$  as much vntrouth is in  $\forall$  breakinge of the one as of  $\forall$  other, & they saye  $\forall$  the vntrouth is more to be pondred than  $\forall$  parson to whom  $\forall$  promyses be made. D. But what hold they if  $\forall$  promise be made for a thing past, as I promise the .xl. pound for  $\forall$  thou hast builded me such a house, lyeth an accion there. S. They suppose nay, but he shall be bound in conscience to perfourme it after his intent as is before said. D. And if a man promise to geue another .xl. pound in recompence for such a trespassse  $\forall$  he hath done hym, lieth an accio there? S. I suppose nay, & the cause is for  $\forall$  suche promise be no perfecte cōtractes for a contracte is partly where a mā for his money shal haue by assent of the other party certain goodes or some other profit at  $\forall$  time of  $\forall$  cōtracte or aff but yf the thing be promised for a cause  $\forall$  is past by way of a recompence then it is rather an accorde then a contract

contracte, but then the lawe is & vpon suche accord the thyng & is promised in recompence must be payd or deliuered in hand, for vpon an accord there lyeth no accion. D.

But in the case of trespass whether holde they & hee be bounde by hys promyse though he intended not to be bounde thereby. S. They thyncke nay no more then in the other cases & be put before. D. In the other cases he was not bound to & he promised but onely by hys promyse, but in thys case of trespass he was bounde in conscience before the promyse too make recompence for the trespass, and therefore it semeth & hee is bound in conscience to kepe his promyse though he intended not to be bounden thereby.

S. Though hee were bounde before the promise to make recompence for his trespass, yet he was not bounden to no summe in certaine but by his promise, and because & the summe maye be to muche or to litle and not egall to the trespass, and & the partye to whome & trespass was done notwithstanding & promyse is at libertie to take hys accion of trespass if he wyl, therfore they holde & he may be his own iudge in conscience whether he intended to be bounde by hys promise or not, as he may in other cases, but if it were of a det, then they hold & he is bounden to performe hys promise in conscience. D.

What if in the case of trespass he asserme his promise with an othe. S. Then they holde & he is bound to performe it for sayng of hys othe though he intended not to be bounden but if he intended to be bound by hys promyse, then they

## the. xxiiii. chapter

saye that an othe nedeth not but to enforce the promise for thei say he breaketh the law of resone which is that we may doe nothing against the trowth as wel when he breaketh his promise that he thueght in his owne hearte to be bounde by, as he doth whē he breaketh his othe though the offence be not so great by reasone of the perjury, more ouer to that thou sayest that vpon suche promises as thou haste rehearsed before shal lye an accion after the lawe Canon, verely as to, that in thys realme there can no accion lie thereon in the spiritual courte if the promise be of a temporal thyng, for a prohibition or a premunire facias shoulde lye in that case. **D.**

That is maruaile sithe there can no accion lye thereon in the kynges court as thou sayest thy selfe. **S.** That maketh no matter, for though there lye no accion in the kynges court against executours vpon a symple contracte, yet if they be sued in that case for the det in the spiritual court a prohibition lieth. And in likewyse yf a mā wage his lawe vntreuly in an accion of det vpon a contract in the kynges court, yet he shal not be sued for þ perjury in the spiritual courte and yet no remedye lyeth for þ perjurye in the kynges court, for the prohibition lieth not only where a man is sued in the spiritual courte of such thyngs as the party may haue his remedye in the kynges court: but also wher the spiritual courte holdeth plee in suche case where they by the kynges prerogatiue and by þ auncient custome of the realme ought none to hold. **D.**

I wyl take aduysemente vpon þ thou haste sayde

sayd in thys matter tyl a nother time & I pray  
the nowe procede to a nother question.

**The.xx. question of the Student.**

**The.xxv. Chapter.**

**A** Man hath two sonnes, one bozne before  
espouseis and the other after espouseis &  
the father by his wyl bequetheth to his sonne &  
heire al his goodes, which of these two sonnes  
shal haue & goodes in conscience. D. As I sayd  
in our first dialogue in latin the last chapter the  
doubte of this case dependeth not in & knowig  
what cōscience wyl in & case, but rather in kno-  
wing which of the sonnes shall be iudged heyre  
(that is to say) whether he shalbe takē for heire  
that is heyre by the spiritual law, or he that is  
heyre by the lawe of the realme, or els that it  
shall be iudged for hym that the father tooke  
for heyre. S. As to that poynte admit the fa-  
thers minde not to be knownen, or els that hys  
minde was that he shuld be takē for heire that  
should be iudged for heyre by that law that in  
thys case it ought to be iudged by. And than I  
pray thec shew me thy mynd therein, for though  
the question be not dyrectly depēdinge vpon &  
poynt to se what cōsciēce wil in this case, yet it  
is right expediēt for the wel ordering of cōsci-  
ence that it be knowē after what lawe it shalbe  
iudged, for if it ought to be iudged aff the tēpo-  
ral law who shuld be heyre: thā it wer agaynst  
cōsciēce if the iudges in the spiritual law shuld



## the.xxv.chapter

iudge him for heire & is heire by & spiritual law  
 & I think they shuld be bound to restitution ther  
 by, & therfore I pray the shew me thine opiniō  
 after what lawe it shall be iudged. D. We  
 thincketh & in thys case it shalbe iudged after  
 the lawe of the Church, for it appereth & the  
 bequest is of goodes, and therfore if anye sute  
 shalbe taken vpon the execucion of the wyl for  
 & bequest, it must be taken in the spiritual court  
 and when it is depending in the spiritual court  
 me thinketh it must be iudged after the spiritu-  
 all lawe, for of the temporall lawe they haue  
 no knowlege nor they are not bounde to knowe  
 it as me thynketh & moze stronger not to iudge  
 after it. But if the bequest had been of a chatell  
 real as of a lease for term of yeres or of a warde  
 or such other thē the matter shoulde haue come  
 in debate in the kynges court, & then I thynke  
 the iudges there shoulde iudge after the law of  
 the realme & that is & the yōger brother is heire  
 & so me thyncketh the diuersitye of the courtes  
 shal make the diuersitye of the iudgement. S.  
 Of & myght folowe a greate inconuenience as  
 me semeth, for it mighte be & in suche case bothe  
 chatels reall and chatels personel weere in the  
 wyl, and than after thine opinion the one sonne  
 shoulde haue the chatels parsonell, and & other  
 sonne the chatels reall, and it can not bee con-  
 ueniently taken as me thinketh but that the fa-  
 thers wyl was & the one sonne shoulde haue al  
 & not to be deuided. Therfore me thyncketh &  
 he shalbe iudged for heire that is heyre by the  
 comon lawe. And & the iudges spiritual in this  
 case

case be bounde to take notice what the commō lawe is, for sythe the thynges that bee in varyaunce be temporal, that is to say, the goodes of the father, it is reason that the ryght of them in thys realme shal be determined by the lawe of the realme. **D.** Howe maye that bee, for the iudges spirituall knowe not the lawe of the realme ne they can not knowe it as to the most part of, it for much parte of the lawe is in suche speache & fewe men haue knoweledge of it and there is no meanes ne familiaritie of study betwene theym & learne the sayde lawes for they be lerned in seuerall places & aff diuers waies and after diuers maners of techinges and in diuers speches and commonlye the one of theym haue none of the bookes of the other, & to bind the spirituall iudges to giue iudgemēt aff that lawe that they knowe not, ne that they can not come to the knowledge of, it semeth not resonable. **S.** They muste doe therein as the kynges iudges muste doe when any matter cometh befoze them & oughte to be iudged aff the spiritual lawe whereof I put diuers cases in our fyrst dialogue in Englyshe the.vii.chap. & is to saye, they muste cyther take knowledge of it by their owne study, or els they must enquire of them & be lerned in the lawe of the Church, what & lawe is and in lyke wyse must they do. But it is to doubtte & some of theym would be loth to aske any such question in such case or to confesse & they are bounde to gyue their iudgement after the temporal lawe and surely they may lyghtly offend theyr conscience. **D.**

## The.xxv.chapiter

I suppose & some bee of opinion that they are not bounden to knowe the lawe of the Realme, and verelye to my remembraunce I haue not hearde & iudges of the spirituall lawe are bound to knowe the lawe of the realme,

S. And I suppose that they are not onelye bounden to knowe the lawe of the Realme or to doe that in theym is too knowe it whan the knowledge of it openeth the ryghte of the matter that dependeth before them but that they be also bounden to knowe wher and in what case thei ought to iudge after it, for in such cases they muste take the kynges lawe as the lawe spiritual to that poynte and are bounden in conscience to folowe it as it maye appeare by diuers cases wherof one is this. Two ioyntenauntes be of goodes and the one of theym by hys laste wyl bequetheeth all hys parte to a straunger and maketh & other ioyntenaunt his executour and dieth, if he too whome the bequest is made sue the other ioyntenaunt, vpon the legacie as executour. &c. vpon this matter shewed the iudges of the spirituall lawe are bounden 'to iudge the will to be void, because it is void by the lawe of the realme wherby the iointenaunt hath ryghte to the whole goodes by & title of the suruiuour and is iudged to haue the goodes as by & fyrste gyfte whych is before & title of & wyl and must therefore haue prefermente as & elder title, and if the iudges of the spiritual court iudge otherwise they are bound to restitution, & by like reason the executours of a man & is outlawed at the tyme of hys death may discharge them selfe

in & spiritual court of & parforming of legacies  
because they be chargeable to the kyng, and yet  
there is no such law of outlagary in & spirituall  
lawe. D. By occasion of & thou haste saide  
before I would aske of the this question. If a  
parson of a Church Alien a porcion of dysmes  
accoordinge as & spirituall lawe hath ordeyned,  
is not & alienacion sufficiēt though it haue not  
the solemnities of & temporall lawe? S.

I am in doubte therein if & porcion bee vnder  
the fourthe parte of & value of the Church but  
if it be to & value of the .iiii. parte of & Church  
or aboue, it is not sufficient, and therefore was  
& writ of righte of dysmes ordeined, and if in a  
writ of right of dysmes it be iudged in & kinges  
court for & patron of & succellour of hym & alie-  
neth because the alienacion was not made ac-  
coordinge to & common lawe, then the iudges of  
the spirituall lawe are bounden too gyue their  
iudgement accoordinge to & iudgemente gyuen  
in & Kinges court. And in likewyse if a person  
of a Church agree to take a pencion for & tithe  
of a mylle, if & pencion be to & fourth parte of &  
value of & Church or aboue than it must be a-  
liened after & solemnities of & Kynges lawes  
as landes and tenementes muste, or els & pa-  
trone of the succelloure of hym & alpyened maye  
brynge a writ of ryght of dysmes and recouer  
in & Kynges court, and than & Iudges of the  
spiritual court are bounden to gyue iudgement  
in & spirituall court accoordinglye as is afore  
sayd. D.

I haue heard say & a writ of right of dysmes is  
D.iii. gyuen

## The. xxv. chapter.

giuen by the statute of Westminster & seconde,  
and & speaketh only of dismes and not of pencio-  
on. **S.** where a Parson of a Church is wro-  
fully deforced of his dismes and is let by an In-  
dicavit to aske hys dismes in & spiritual courte  
than his patrone may haue a writte of ryght of  
dismes by the statute & thou speakest of for  
there laye none at & common lawe for the per-  
son had there good ryght though he were let by  
the Indicavit to sue for his right, But whan &  
parson had no remedy at & sperituall lawe ther  
a writ of ryght of dismes lay for the patron by  
the common law as well of pencions as of dys-  
mes, and some saye & in suche case it lay of lesse  
than of the fourthe parte by the common lawe  
but that I passe ouer. And the reason why it  
laye at the common lawe if the disme oz pency-  
ons were aboue the fourth part &c. was this by  
the spiritual lawe the alienation of the person  
wyth assent of the byshope and of the Chapter  
shall barre the successour wythout assent of the  
partrone, and so the patrone might lese hys pa-  
tronage and he not assenting thereto for his en-  
cumbent might haue no remedye but in the spi-  
ritual court and there he was barred wherfore  
the patrone in that case shall haue his remedye  
by the common lawe where the assent of the oz  
dinary and Chapter without the patrone shal  
not serue as is sayde before. But where the en-  
cumbent had good ryght by the speritual lawe  
ther lay no remedy for the patron by the comō  
lawe though & encumbent were let by an In-  
dicavit, & for & cause was the sayd statute made  
and



and it lieth as well by the equitie for offringes  
and pensions as for dismes. Than ferther I  
woulde thyncke & where the spirituall courte  
maye holde ple of a temporall thyng that they  
must iudge after the temporall lawe, and & yg-  
norauce shal not excuse them in that case, for  
by takyng of theyr offyce they haue bounde the  
selfe to haue knowledge of as muche as be lon-  
geth too their offyce as all iudges be spirituall  
and temporall. But if it were in argumente in  
thys case whether the eldest sonne myghte be a  
prieste bycause he is a bastarde in the temporal  
lawe & shoulde be iudged after the spirituall  
lawe for the matter is spirituall. D.

pet notwithstandinge all the reasons & thou  
haste made I can not see howe the iudges of  
the spirituall lawe shall bee compelled to take  
notice of the temporall lawe seynge & the mooste  
parte of it is in frenche tonge, for it were hard  
& euerye spirituall iudge shoulde be compelled  
to learne & tonge. But if the lawe of the realme  
were sette in suche ordre & they that intende to  
studye & lawe Canon might firste haue a sighte  
of the lawe of the realme as they haue nowe of  
the lawe Ciuill, and & some bookes and treati-  
ses were made of cases of conscience concerning  
those two lawes as there be nowe concerning  
the lawe Ciuill & & law Canon I would assent  
& it were right expedient and tha reason might  
serue the better & they shoulde be compelled to  
take notyce of the lawe of the realme as they be  
nowe bounden in suche countreis as the lawe  
Ciuil is vsed to take notice of & lawe. S

De

## The.xxvi chapter.

He thynketh thine opinion is righte good and resonable but tyll such an order be take they are bounde as I suppose to enquire of theym & be learned in the common lawe what & lawe is, & so to gyue theyr iudgemente accordinge, if they wyll keepe them selfe fra offence of conscience, and for as muche as thou hast wel satisfied my mynde in al these questions before.

I praye the nowe & I maye somewhat fele thy minde in diuers articles & be written in diuers bookes for the ordryng of conscience vpon the lawe Canon and Ciuyl, for me thinketh & there be diuers conclusions put in diuers bookes as in & summes called Summa Angelica and Summa rosella, and diuers other for the good order of conscience & be ageynste the lawe of this realme and rather blinde conscience than to giue any light vnto it. D.

I pray the shewe me some of those cases.

S I wyl with good wyl.

Whether an Abbot may wpyth conscience present to an aduouson of a Chyrch & belongeth to the house without assent of the couent.

## The.xxvi. Chapter.

I Tappereth in the Chaptre Canoscitour de his que siunt a prelatis the whypche Chaptre is recited in & summe called Summa Angelica in the tyle Abbas the.xxvii. artycle & he maye not wpythout any cuitome oz any speciall pzeudiedge

ledge doe helpe therein. **S.** Trowth it is that there is such a decretale, but they that bee learned in the lawe of Englande holde & decretale byndeth not in this realme, and thys is the cause why they do holde that opinion. By the lawe of & Realme the whole dysposicion of the landes and goodes of the Abbey is the Abbottes onely for the tyme & he is Abbot and not in the couent, for they bee but as deade persons in the lawe and therefore & abbot shall sue and be sued onely without & couente doe homage fealties atturme make leses and present to aduoussors onely in his owne name, and they say farther & this auctoritie cannot be taken fro him, but by the lawe of the Realme, and so they saye & the makers of & decretale exceded theyr power. Wherfore they say it is not to be holden in conscience, no more than if a decreet wer made that a lease for terme of yeres or at wyl made by the Abbot wythout & couent shoulde be immediately voyde, and so they thynke & the Abbot may in thys case presente in hys owne name wythout offence of conscience because & sayde decretale holdeth not in this Realme. **D.** But many be of opinion & no mā hath auctozite to present in right and conscience to any benefice & cure but the Pope or that he hath his aucthority therein deriuied fro the Pope, for they say that for as much as the Pope is the vicar general vnder god and hath the charge of the soules of all people & be in the flocke of Christes church, it is reason & syth he cannot minstre to all he doe that is necessary to al & people for their soule

## The xxvi chapter.

soule health in hys owne parson that hee shall assigne deputies for hys dyscharge in þe behalfe. And because patrones clayme too presente too Churches in thys realme by theyr owne righte withoute tytle derpyed fro the Pope they saye that they vsurpe vpon the Popes auctoritie and therefore they conclude that though the Abbot haue title by the lawe of the realme to presente in thys case in hys owne name that yet because that tytle is agaynst the Popes prerogatiue that that tytle ne yet the lawe of the realme that maynteneth that tytle holdeth not in conscience. And they saye also that it belongeth to the lawe Canon to determine þe right of presentment of benefices, for it is a thynge spirituall and belongeth to þe spiritual iurisdiction as the deprivation fro a benefice doth & so they saye the said decretall bindeth in conscience though in þe lawe of the realme it bynd not. **S.** As to thy fyrst consideracion. I woulde ryghte well agree that if the patrones of Churches in thys realme claymed to put encumbentes into such Churches as should fall voyde of their patronage without presentynge them to þe byshop or if they claymed þe byshoppe should admit such encumbent as they should present without any examinacon to be made of his abilitie in þe behalfe, that þe clayme were agaynst reaso & conscience for the cause that thou haste rehearsed: but for as muche as the patrons in thys realme clayme no more but to present their encumbentes to the byshoppe and then the byshop to examine the abilitie of the encumbent and if he find  
him

hym by the examinacion not able too haue cure of soule, he thē to refuse hym & ſ patron to preſent another ſ ſhalbe able, and if he be able thā the biſhop to admit him, inſtitute him: & induct him. I think ſ this claime & their preſentmētſ therupon ſtande with good reaſon and conſcience, and as to the ſeconde conſideracion it is holden in the lawes of the realme ſ the right of preſentment to a Church is a temporal inheritaunce & ſhal diſcende by courſe of inheritaunce fro heire to heire as landes & tenementes ſhall and ſhalbe taken as an aſſes as landes and tenementes bee and for the triall of the ryghte of patronages be ordeined in the lawe dyuers actions for them ſ be wronged in that behalfe as wyttes of ryght of aduouſon Aſſiſes of Daryn preſentment Quare impedit, and diuers other which alway without time of minde haue bene pleded in the kinges courtes as thinges parteyning to hys crowne and royall dignitic, & there fore they ſaye ſ in thys caſe hys lawes oughte to be obeyed in law and conſcience. D.

If it come in variaunce whether hee that is ſo preſented be able oz not able by whome ſhall the abilitie be tried? S. If the ordinarie be not party to ſ accion it ſhal be tried by the ordinarie, and if he bee partie it ſhalbe tried by the metropolitane. D. Than the lawe is more reaſonable in that point than I thought it had ben but in ſ other poit I wil take aduiſemēt in it tyl another time, & I praye the ſhewe me thy mind in this point if an Abbot name his couēt with hym in hys preſentacion doth ſ make the preſenta-



## The.xxvi.Chapter

presentacion boyd in the lawe oz is the presentacion good that not withstandinge: **S.** I thinke it is not boide therfore, but the naming of them is boyde and a thing more than nedeth for if the abbot be disturbed he must byng his accion in his owne name without the couent.

**D.** Then I perceine well that it is not prohib in the lawe of Englande, but  $\S$  the Abbot may name the couent in his presentacion wyth him, and also take their assente whome he shall present if he wpll, and then I holde it the surest way that he so doe, for in so doinge he shall not offende nother in lawe nor conscience. **S.**

To take the assent of the couent whom he shall present and to name the also in the presentacio, knowinge that he maye do otherwise bothe in law and conscience if he wyl, is no offence. But if he take their assent oz name theym with hym in the presentacion thinkinge  $\S$  he is so bound to do in law and conscience, settyng a conscience where none is, and regardeth not the lawe of the Realme that wpll dyscharge his conscience in this behalfe if he wyl soo that he presente an able man as he maye do without theyr assente, there is an erreure and offence of conscience in the abbot. And in likewyse if the Abbot present in his owne name, and therfore the couent sayth that he offendeth conscience in that he obserueth not the lawe of the thurche for that hee taketh not their assent, than they offend in iudgyng him to offende, that offendeth not. And therfore the sure waye is in this case to Judge both the sayde lawes of suche effecte as they be  
and

the.xxvii. chapter. fo.ii2.

and not to set an offence of conscience by breake-  
kyng of the sayde decre whyche standeth not in  
effect in thys beihalse withinthis realme.

**I**f a man finde beastes in hys ground doing  
hurt, whether may he by his owne auctho-  
ritic take them and keepe them tyl he  
be satysfied for the hurt.

The.xxvii. Chapter.

**T**his Question is made in the Summe cal-  
led summa rosella in the title of restitucyon  
that is to say restitucio. xiii. the. ix. article, and  
there it is aunswered þ he maye not take theym  
for to holde them as a pledge tyl he be satysfied  
for the hurte: but þ he maye take them & keepe  
them tyl he knowe who oweth them þ he maye  
therby lerne against whom to haue his remedy.  
Is not the law of the realme so in lyke wyse?  
**S.** No verey, for by the law of the Realme:  
he that in that case hath the hurt maye take the  
beastes as a distreile and put them in a pounde  
ouert so it bee within the same tyme, and there  
let them remayne tyl the owner wyl make him  
amendes for the hurte. **D.** What cal-  
lest thou a pounde ouerte. **S.** A pounde o-  
uerte is not onely suche poundes as be comon-  
ly made in towne and lordshippes for to put in  
beastes that be distreyned, but it is also euerye  
place where they maye be in lawfullye not ma-  
kyng the ownoure an offender for their be-  
yng there, and that it be there also that the  
owner

## The.xxvii.Chapter.

*A pound ouer  
is any place  
where the*

owner maye lawefully gyue the beastes meate  
and drinke whyle they be in ponde. D.

And if they dye in ponde for lacke of meate  
whose icoperdye is it? S. If it be suche a  
pounde ouerte as I speake of, it is at the pe-  
ril of hym & oweth the beastes so that, he & had  
the hurte shall be at libertie to take his accyon  
for the trespas if he wil, and if it be not a lawe-  
full ponde then it is at the peril of hym & dys-  
trayned, and so it is if he dysue them out of the  
shyre. And they dye there.

D. I put case & he that oweth & beastes offer  
sufficient amendes, and & other wyl not take it  
but kepeth the beastes shyll in ponde, may not  
the owner take them out? S.

No for he maye not be hys owne iudge. And if  
he doe, an accion lieth ageinst him for breakyng  
of & ponde, but he must sue a repleuyn to haue  
hys beastes deliuered hym out of ponde and  
thereupon it shalbe tryed by .xii. men whether  
the amendes & was offred were sufficient or  
not, and if it be founde & the offer was not suf-  
ficient: than he & hath the hurte shall haue such  
amendes as & .xii. men shal assesse. D. If it be  
found by & .xii. men & the amendes were suffici-  
ent, shal he & refused to take it haue no punish-  
mente for hys refusell and for keepnge of the  
beastes in ponde after & time. S. I thinke  
no, but & he shal yelde damages in the repleuyn  
because the issue is tried ageinst him. D.

I put case & the beastes after that refusell dye  
in ponde for lacke of meate at whose icoperdie  
is it than. S. At the icopardye of hym &  
owed

*ponde*

*the owner  
of the ponde*

## The xxviii. chapter. Fo. 113.

owed the beastes as it was before for his bound at his perill by reason of that wronge & was done at & beginning to see that they have meat as long as they shal be in pound unless the kinges writ come to deliuer them, and he resisteth it, for after that time it will be at his leoparde if they dye for lacke of meate & the damages shal be recovered in an action brought vpo the statute for disobeying the kinges writ.

**Whether a giste made by one vnder the age of xxb. yeres be good.**

## The xxviii. Chapter.

It appeareth in Summa angelica in the title donacio prima, the. vii. article that a man be fore the age of. xxb. yeres mai not geue without it be with the auctoritie of his tutour. Is it not so likewise at the common lawe? **Ans.** The age of infanties to geue or sell their landes & gooddes in the law of Englande at. is. xxi. yeres or above so that after that age the gift is good and before & age it is not good, by whole assent soever it be except it be for his meat and his drinke or apparell or & he do it as executour in payourmance of the wyll of his testatour or in some other lyke cases that needeth not to be rehearsed here; and that age must be observed in this realme in law and conscience and not the sayde age of five and twenty yeres. **Q.** I put case it were ordeyned by a decrec of the Church that if anye manne by his wyll bequeth gooddes to an other, and

## The xxviii. chapter.

Willeth that they shalbe deliuered to him at hys full age, and that in 5 case five and twenty yere shalbe taken for 7 full age, that not that berre be obserued and stand good after the lawe of England. S. I suppose it that not, for though it belonge to the church to haue 7 probate and the execucions of testamettes made of goodes and catels, except it be in certayne Lordshippes and seignories 7 haue them by prescripcion, yet the church may not as it semeth determine what shal be 7 lawfull age for any person to haue 7 goodes for that belongeth to the kynge and his lawes to determine, and therfore if it were ordeyned by a statute of the realme, 7 he shoulde not in suche case haue the goodes til he were of the age of xxv yere, 7 statute were good and to be obserued as well in the spirituall lawe as in the lawe of the realme, and if a statute were good in 7 case, then a deere made therof is not to be obserued, for the ordering of 7 age may not be vnder two seuerall powers, and one property of euery good lawe of man is that the maker excede not his auctoritie, and I thinke that the spirituall Iudges in that case ought to iudge the full age after the lawe of the realme, scyng 7 the matter of the age concerneth temporall goodes, and I suppose farther that as the king by auctoritie of his parliament may ordayne 7 all wylles shalbe voyde, and that the goodes of euery man shal be disposed in such maner as by statute shoulde be assigned that more stronger he may appoint at what age such wille as be made shalbe performed. W. thinkest thou then 7 the kynge may take away the power of 7  
ordr



## The.xxviii.chapter Fo.ii46

ordynarye that he shall not call executours to accompt. **S.** I am somewhat in doubte therin but it seemeth that yf it myght be enacted by statute, & all willes should be voyde as is aforesaid that than it myght be enacted & no man shoulde haue auctoritie to cal none to accompt vpon such willes, but such as & statute shall therein appoynt, for he & maye do the moze, maye do the lesse, notwithstandinge I will nothing speake determinatelye in & poynt at thys tyme, ne I meane not that it were good to make a statute & all willes should be voyde, for I thinke them right expedient, but myne intente is to proue & the common lawe may ordayne the tyme of & fall age, as well in willes of temporal thinges as otherwise, and also & will shalbe made. And if it may so do than much stronger it belongeth to the kinges lawes to interpretate willes concerning temporal thinges as well when they come in argument before hye iudges as when they come in argument before spiritual iudges, and & they ought not to be iudged by seuerall lawes (that is to saye) by the spiritual iudges in one maner, and by the kinges iudges in an other maner.

**I**f a man be convict of heresy before the ordinary, whether his goodes be forfeited.

**The.xxix.Chapter.**

**I**t appeareth in Summa angelica in the title donacio prima the.xiii. article, that he that is

## The.xxix.chapter.

an heritike may not make executors, for in y<sup>e</sup> law  
his goodes be forfeite, what is the lawe of the  
realme therin. **S.** If a man be couict of heresies  
and abiure he hath forfeit no goodes, but if he be  
couict of heresie & be deliuered to lay mens han-  
des then hath he forfeit al his goodes & he hath at  
that tyme & he is deliuered to them, though he  
be not put in execution for y<sup>e</sup> heresy, but his lades  
he shall not forfeit except he be dead for y<sup>e</sup> heresy,  
and then he shal forfeit the to y<sup>e</sup> lordes of the fee,  
as in case of felonye, except they be holden of the  
ordinary, for then y<sup>e</sup> kunge shall haue the forsay-  
ture, as it appeareth by a statute made the second  
yere of kyng Henry the fift. the. vii. chapter. **W.**  
**W**he thynketh that as it belongeth onely to the  
Church to determine heresies, that so it belon-  
geth to y<sup>e</sup> church to determine what punishment  
he shal haue for his heresie, except death whiche  
they may not be iudges in; but if y<sup>e</sup> church decre  
that he shal therfore forfeit his goodes, me thin-  
keth that they be forfeit by that decree. **S.**  
**S**ay verely, for they be temporall and belong to  
the iudgemēt of the kynges court, and I thynke  
the ordinarye myght haue set no fine vpon one  
empeched of heresie til it was ordeyned by y<sup>e</sup> sta-  
tute of Henry the iiii. that he may set a fine in y<sup>e</sup>  
case if he see cause, and than the kyng shall haue  
that fine as in the sayd statute appeareth.

**W**here diuers patros of an aduowson and the  
churche boydeth, the patrons vary in their pre-  
sentmētes, whether y<sup>e</sup> Bishop shal haue libertie  
to present which of the incumbents  
that he wyll or not.

# The. xxx. chapter. Fo. iij.

## The. xxx. Chapter.

**T**his question is asked in Summa rosella, in the tytle Patronus the. ix. article and there it appeareth by the better opinion that he may present whether clarke he wyl; howbeit the maker of the sayd summe, sayth by the rigour of the law the Bishop in such case may present a strainger, because the patrons agree not, and in the same chapter Patronus the. xv. article.

It is said & he must be preferred & hath the most merites and hath the most parte of the patrons.

And yf the number be egall, that than it is to consider the merytes of the patrons, and if they be of like merite, than may the Byschoppe commaund them to agree and to present agayn. And yf they can not yet agree, than the liberty to present is geuen to the Bishop to take which he wil and if he may not yet present without great trouble than shal the Bishop order the church in the best maner he can, and if he can not order it, then shal he suspend the church and take away the relikes, to the rebukes of the patrons, and if they wyl not so be ordered than muste he aske helpe of the temporaltie, and in the. xv. article of the sayde title patronus. It is asked whether it be expedient in such case that the more part of & patrons agree hauing respect to al & patrons or & it suffice to haue & more part in coparison of & lesse part as thus. There be. iiii. patrons, two present one clarke: the thirde presenteth another, and the fourth another, he & is presented by. ii. hath not & more part in comparison of al patrons for they be egall, but he hath the more part hauing respect

711.0 The xxxi. chapter.

to the other presentmentes, to this question it is answered & either the presentment is made of them & be of colage and there is requisite & more part hauing respect to al & colage, or els euerý mā presenteth for him selfe as cōmonly do lay men & haue & patronage of their patrimonye, & than it suffileth to haue & more part in respect of the o-  
ther partes, both not the lawe of England agree to these diuersities. S. No verely. D. What order then shalbe taken in the law of England if & patrons vary in their presentments? S. After the lawes of England this order shalbe taken, if they be ioyntenantes, or tenants in cōmon of & patronage, and they vary in presentmēt & ordina-  
ry is not bounden to admit none of their clarks neyther the more part nor the lesse, and if the. vi. monethes passe or they agre thē he may p̄sēt by the lapse. But he mai not p̄sēt bin the. vi. mo-  
nethes, for if he do they may agre & bring a qua-  
re impedit against him, & remoue his clark, & so & ordinary shalbe as disturbour. And if & patrōs haue & patronage by discent as coparceners thā  
is the ordinary bounde to admit & clark of the eldest suster for & eldest shal haue the preferment in the law and if she wil, & than at the next auoi-  
daunce & next suster shall present and so by turne, one suster after an other, tyll all & sisters or they-  
heyes haue presented, & than & eldest suster shal begin again, & this is called a presenting bi turne,  
& it holdeth alwaye betwene coparceners of an aduouson, except they agre to present together or  
& they agre by composition to present in some o-  
ther maner, & if they do so & agreement must stād  
but

## The xxx. chapter. Fo. ii. 6.

but this must be alwaye except that if at y<sup>e</sup> firste auoydance y<sup>e</sup> shalbe after the death of the comon aunceller, the kyng haue y<sup>e</sup> warde of the yongest daughter, y<sup>e</sup> than the kyng by hys prerogatyue shal haue the presentment. And at the next auoydaunce the eldest sister and so by turne. But it is to vnderstande y<sup>e</sup> if after the death of the comon aunceller y<sup>e</sup> church vopdeth, and y<sup>e</sup> eldest sister presented together w<sup>th</sup> an other of the sisters, & y<sup>e</sup> other sisters euery one in their owne name or together, that in y<sup>e</sup> case the ordinary is not bounde to receyue none of their clarkes but maye suffer the churche to runne into y<sup>e</sup> laps, as it is layd before, for he shall not be bound to receyue y<sup>e</sup> clarkes of y<sup>e</sup> eldest sister, but where she presenteth in her owne name. And in this case where the patrons vary in presentment, the church is not properly said letigious, so y<sup>e</sup> the ordinary should be bound at his peril to direct a w<sup>rit</sup> to inquire (de iure patronatus) for y<sup>e</sup> w<sup>rit</sup> lieth where two present by seueral titles, but these patrons present al in one title, & therefore y<sup>e</sup> ordinary may suffer it to passe if he will into the laps, & this maner of presentmentes must be obserued in this realme in lawe and conscience.

**How longe time the patron shall haue to present to a benefice.**

The xxxi. chapter.

**T**his question is asked in Summa angelica in the title Jus patronatus the. xvi. article, and there it is answered y<sup>e</sup> if the patron be a lay man that he shall haue. iiii. monethes, and if he be a clark, he shall haue, vi. monethes.

D. iiii.

S.



FOUR

**Q.** From what tyme shall the six monethes be accompted. **A.** That is in dyuers manners

Q. What if he haue knowledge of the resignation or deprivation and not by the Bp<sup>hop</sup>, but by some other, shall not the fixe monethes begin than fro the tyme of that knoweledge. S. 7

mon is also a cause of boydaunce howe shall the  
vi. monethes be reckoned there. S. There can  
no vnion be made but the Patrons muste haue  
knowledge, and it muste be appointed who shall  
present after that vnion, that is to say, one of the  
or both, either ioyntly or by turne one after ano-  
ther as y agreement is vpon the vnion, and like  
the patron is priuy to the auoydance and is not  
ignorant of it, the sixe monethes shalbe accoun-  
ted fro the agremente. D. I see well by the

sed from the agreement. D. I see well by the reason that thou hast made in this Chapter, that ignorance sometime excuseth in the law of England

The xxxi. chapter. Fo. 117.

land, for in some of the said auoydaunces it shall excuse the patrons as it appereth by the reasons aboue, and in some it shall not, wherefore I pray thee shew me somewhat where ignorance excuseth in the lawe of Englande and where not after thyne opinion. S. I wyll wyth good wyl hereafter do as thou sayst if thou put me in remembraunce therof. But I woulde yet more thee somewhat further in such questions as I haue moued thee before concerning the diuersities betwene the lawes of Englande and other lawes, for there be many mo cales therof that as we seemeth haue right great nede for the good order of conscience of many persons to be resorted to & to be brought into one opiniō both amōg spirituall and tēporal, as it is in y case wher doctours hold opinion & the statute of laie men that restrayne libertie to geue landes to the churche shoulde be voyde, and they say further & if it were prohibyt by a statute & no gyft shoulde be made to foreyns & yet a gyfte made to the churche shoulde be good for they saie that y inferiour may not take away the auctoritie of y superiour and this sayinge is directly agaynst the statutes wherby it is prohibyte that landes shoulde not be geuen into mortmayne, and they say also & byquestes and giffes to the churche must be determined after the law Canon, and not after the lawes and statutes of laie men, and so they regarde muche to whom y gyfte is made whether to the church or to make cauceis, or to cōmon parsons, and beare more fauour in giffes to the churche than to other, and the lawe of the realme beholdeth y thing that is geuen

## The. xxxi. chapter.

geuen and pretended & if the thing that is geuen be of landes or goodes that the deteterminacion therof of ryght belongeth in thys realme to the kinges lawes whether it be to spiritual man or temporal to the churche or to other, & so is great diuision in this behalfe when one preferreth his opinion, and another hys, and one this iurisdiction, & another that, and & as it is to feare more of singularity then of charity, wherfore it semeth & they & haue the greatest charge ouer the people specially to & helth of their soules, are moit bound in cōsciēce before other to loke to this matter, & to do & in thē is in al charity to haue it reformed not beholding & temporal iurisdiction nor spiritual iurisdiction but & cōmon welth & quietnes of the people, and & vndoubtedly would shortly folow if this diuision were put away, whiche I suppose vercly wil not be but & al menne wythin & realme both spiritual & tēporal be ordred & ruled by one lawe as to tēporal thinges notwithstanding forasmuch as & purpose of this writing is not to treat of this matter, therfore I will no farther speak otherof at this tyme. D. Than I pray thee procede to another questiō as thou saist thy mind is to do. Sh. I will with god will.

**C**If a manne be excommuniced whether he may in any case be assoyled without making satisfaccion.

## The. xxxii. Chapter.

**I**n the summe called *Summa rosella*, in the title *absolutio quarta*, the second article: it is sayd

The xxxi. chapter. Fol. 118.

sayde that he þ is excommunicate for a wronge  
if he be able to make satisfaccion ought not to be  
assoyled but he doe satisfie, and that they offende  
that do assople hym, but yet neuertheles he is as-  
soyled, and if he be not able to make amendes þ  
he must yet be assoyled, takyng a sufficient gage  
to satisfie if he be able hereafter, or els that he  
make an othe to satisfie if he be able. And these  
saynynges in many thynges holde not in þ lawes  
of England. W. I praye thes shew me wherin  
the law of the realme varieth therfro. S. If  
a manne be excommunicate in þ spirituall court  
for det, trespass, or such other thinges as belonge  
to the kynges crowne, and to his royal dignitie,  
there he ought to be assoyled wthout makynge  
any satisfaccion, for þ spirituall courte exceadeth  
their power in þ they helde plee in those cases  
and the partye if he will maye therupon haue a  
Hemur facias, as well agaynst the partye  
þ sued him, as against the iudge, and therfore in  
this case they ought in conscience to make abso-  
lucion without any satisfacciō, for they not ones  
ly offended þ party in calling him to answer be-  
fore them of such thinges as belong to þ law of  
þ realme, but also þ king, for he by reason of such  
suites may lese great aduantages by þ reason of  
þ writs originals, iudicials, fines, amerciamen-  
tes & such other thinges as might grow to him if  
suites had be take in his courts according to his  
lawes, & according to his sayng it appereth i di-  
uers statutes þ if a mā lay violent hands vpon a  
clerke & beat him, þ for the beatyng amendes shal  
be made in the kynges court, and for the layinge  
of

The. xxxii. chapter.

of violent handes vpon the clatke amendes shal  
be made in y<sup>e</sup> court churlian. And therefore if the  
iudge in the courte churlian would awarde the  
party to yeld damages for the beatyng, he did a-  
gaynst that statute, but admit that a man be ex-  
commenged for a thing that the spiritualle courte  
may awarde the party to make satisfaccion of, as  
for the not incloſing of the churchyard, or for not  
apparelyng of the churche conueniently. The I  
thinke the partye must make reſtitucion or lay a  
ſufficiente cauſion if he be able or he be alloyled,  
but if the partye offer ſufficiente amendes and  
haue hys absolucion; and the iudge wyl not  
make hym his letters of absolucion, yf the ex-  
commengement be of recorde in the Kynges  
courte than the kyng may write vnto the spiri-  
tuall Iudge commaundynge hym that he make  
the party his letters of absolucion vpon payn of  
a contempt, and if y<sup>e</sup> ſaid excommunicacio be not  
of recorde in the Kynges courte than the partye  
may in ſuch caſe haue his accion agaynst y<sup>e</sup> iudge  
ſpirituall for that he woulde not make hym hys  
letters of absolucion, but yf he be not alloyled or  
if he be not able to make ſatisfacciō and therfore  
the iudge ſpirituall wil not alloyle him, what the  
kynges lawes maye do in that caſe I am ſome-  
what in doubt, and wyl not muche ſpeake of it  
at this tyme, but as I ſuppoſe he maye as well  
haue his accion in that caſe for the not alloplyng  
hym as where he is alloyled and y<sup>e</sup> the iudge wil  
not make hym hys letters of absolucion, and I  
ſuppoſe the ſame lawe to be where a man is ac-  
curſed for a thyng that the iudge had no power



The xxxiii. chapter. Fol. 119.

to accurse him in as for det. trespass. or such other  
D. There he mai haue other remedies as a Pre-  
munire facias, or such other, and therefore I sup-  
pose the other accion lyeth not for hym. S.

The iudge and the party may be dead, and then  
no Premunire lyeth, and though they were alive  
and were condemned in a Premunire, yet that  
shoulde not auoyde y<sup>e</sup> excommungement, & there-  
fore I thinke the accion lyeth specially yf he be  
therby delayed of accions that he myght haue in  
the kynges court, if the sayde excommungement  
had not bene.

Whether a Prelate may re-  
fuse a legacpe.

See. xxxiii. Chapter.

I T is moued in the sayd summe named Rol-  
la, in the title alienacio. xx. the. xi. article whe-  
ther a prelate maye refuse a legacpe, wherin dy-  
uers opinions be recited there, which as me thin-  
keth haue nede after the lawes of the realme to  
be moze plainly declared. D. I pray thee shew  
me what the lawe of the realme wyll therin.

S. I thinke that euery prelate and soueraine  
that may onely sue and be sued in his own name  
as Abbots, Bishops, and suche other maye  
refuse any legacpe that is made to the house, for  
the legacpe is not perfect tyll he. to whome it is  
made assent to take it, for els if he myght not re-  
fuse it, he myghte be compelled to haue landes  
wherby he myght in some case haue great losse.  
but

## The. xxxiii. chapter.

but than if he intende to refuse, he muste as sone as hys title by þ legacye falleth, reynquyshe to take the profittes of the thinge bequeth, for if he once take the profittes therof, he shall not after refuse the legacye: but yet hys successour mape if he will refuse the takynge of the profittes to save the house fro yeldyng of damages or fro arrerages of rentes if any suche be, and like law is of a remaynder as is in legacye, for though in the case of a remaynder, and also of a deuise as most men saye, & freholde is cast vpon hym by the law when the remaynder or deuise falleth: yet it is in hys libertye to refuse & takynge of the profittes and to refuse & remaynder if he wil as he might dooe of a gyfte of landes or good, for if a gyfte be made to a man that refuseth to take it, the gyfte is voyde, and if it be made to a manne that is absent, the gyfte taketh not effect in hym tyll he assente: no more than if a man disseale one to another mannes vse, he to whose vse the dissealson is made, hath nothing in that lande no is no dissealour till he agree. And to suche dissealsons and gistes, an Abbōt or Priour may dissagre as well as anye other man, but after some men a Bishop of a deuise or remainder & is made to the Bishop & to þ Deane & Chapiter, nor a Deane & a Chapiter of a deuise or remainder made to the ne yet the maker of a colage of such a deuise or remainder made to him & to his brethren, may not dissagre without þ Chapiter or brethren. For the bishop of such lands as he hath with þ Deane and Chapiter, ne the Deane nor master of such land as they haue with þ Chapiter or brethren maye not

The. xxxiii. chapter. Fol. 120.

not answer, without & chapiter & brethren, and  
therfore some saye & if the Deane or master will  
refuse or disclayne in the landes & they haue by  
the deuise or remaynder & disclaymour, without  
& chapiter or brethren is boide. And therfore it  
is holden in the lawe & if a Bishop be vouched  
to warrantye, and & tenaunt byndeth him to the  
warrantye by reason of a lease made to him by &  
Bishop and by the Deane and & Chapiter, pel-  
dying a rent, & in that case the bishop may not dis-  
clayne in & reuercion without the assent of the  
Deane and chapiter. But yet if a reuercion were  
graunted to a Deane and a Chapiter and & deane  
refuse, the graunte is voyde, & so it appeareth &  
a Deane may refuse to take a gyfte or graunt of  
landes or goodes or of a reuercion made to hym  
and to the Chapiter and yet he may not disagree  
to a remaynder or deuise, and & diuersitie is be-  
cause & remainder and deuise be caste vpon hym  
without any assent, wherunto nether the Deane  
nor & Chapiter by them selfe may in no wise dis-  
agre wythout & assent of the other, but a gyfte or  
graunt is not good to them wout they bothe as-  
sent, and in suche giftes as I suppose an Infant  
maye disagree as well as one of full age, but yf a  
woman couert disagree to a gift, and the husband  
agree, & gyfte is good. Q. What if the landes  
in that case of a manne and his wyfe be charged  
with damages, or be charged w more rente then  
the lande is worthe, and & husband dye shall the  
wyfe be charged to the damages or to the rent.  
A. I thynke maye if the wyfe refuse the occu-  
pacion of the ground after her husbandes death,

and

The. xxxiii. chapter.

and I thinke & same law to be if a lease be made to & husband & to & wife yelding a greater ret thā & land is worth, & the wife after & husband's death may refuse the lease to saue her fro & payment of the rent, and so may & successour of an abbot. D. And if the husbāde in & case ouer lyue the wife and than make his executours and dye, whether may his executours in likewyse refuse the lease. S. If they haue goodes sufficient of theyr testatour to paye the rent, I thynke they may not refuse it, but if they haue not goodes sufficiente of their testatours to paye the rent to the end of the terme, I thynke if they relinque the occupation they maye by speciall pleadynge discharge them selfe of the rent and the lease, and if they do not they may lightly charge them selfe of their owne goodes. And if a lease be made for terme of life the remainder to an abbot for terme of the lyfe of John at stile, reseruyng a greater rente than the lande is worthe, and after the tenant for terme of lyfe dieth the Abbot may refuse the remainder for the cause befoze rehearsed and in case that the Abbot assēt to the remainder wherby he is charged to the rent durynge & tyme & he is abbot, and after he dieth or is deposed liuyng the sayd John at stile, in that case his successour may discharge hym selfe by refusalge the occupation of the lande as is aforesayde. But I thinke that yf suche a remaynder were made to a deane and to the chapiter, and & deane agree wout the assente of the Chapitre, that in & case the deane and the Chapitre may afterward disagree to the remayndre, and that the acte of the deane

out & assent of & chapiter shall not charge & chapter in & behalf, & thus it appereth though the meaning of & saide chapter & article in the sayde summe be, & a prelate may not disagree vnto a legacy for hurting of & house, yet he may after the lawes of & realm disagree therto where it should hurt his house. And if in a precept or reddat ther be but one tenant be he spiritual or temporal, & he refuse by way of disclaimer in such case where he may disclaim by & law, ther & land shall vest in & demandant, & if ther be two tenants the it shall vest in his fellow, if he wil take & whole tenancy vpon him or els it shall vest in & demandant. But if an Abbot or a lay man refuse & taking of the profits, & shew a speciall cause why it should hurte him if he did assent & be therby discharged as is sayd before. In whō the land shall thā beste it is mozed out, wherof I wil no farther speke at this time. And thus it appereth by diuers of & cases & be put in this chapter & he that is ignorant in & lawe of the realm, shal lacke the true iudgement of conscience in many cases. For in many of these cases, that that may be done therein by the lawe muste also be obserued in conscience. &c.

Whether a gifte made vnder a condition be void of the souerayne onely breaketh the condicion.

The. xxxiii. Chapter.

In Summa rosella in the tytle alienacio, the xii. article is asked this question whyther a

Q. i.

gifte

gifte



## the xxxiiii. Chapter.

gifte made vnder a certaine fourme maye bee a-  
 noyed or reuoked because the Prelate or soue-  
 raine onely dyd breake the fourme, and it is  
 there answered that it maye not for that & dede  
 of the prelate onely oughte not to hurt & church  
 and if those woordes vnder a maner bee vnder-  
 stande of a gifte vppon condicion as they seeme  
 to bee, than the said solucion holdeth not in this  
 Realme neither in lawe nor conspence. **D.**  
 What is than the lawe of Englande if a mynne  
 enfeoffe an Abbot by dede indented vppon condi-  
 cion & if the Abbot paye not to the feoffoure a  
 certayne some of money at suche a day that than  
 it shall bee lawefull to the feoffoure to reentre,  
 and at that daye the Abbot sayleth of hys paye-  
 mente maye the feoffoure lawfully reenter and  
 put out the Abbot. **S.** Yea verily for he had  
 no right to the lande but by the gift of the feof-  
 four and his gift was condicionell and therefore  
 yf the condicion bee broken it is lawefullye by  
 lawe of Englanqe for the feoffoure to reentre and  
 to take his lande agayne and to holde it as in  
 his firste estate by whiche reenter after the la-  
 wes of the realme he disproueth the firste iur-  
 tye of seyson and all the meane actes done be-  
 twene the firste feoffement and the reenter, and  
 it forceth litle in the lawe in whome the defaulte  
 bee that the condicion was not parformed whe-  
 ther in the Abbot or in his couente or in bothe  
 or in any other parson whatsoener he be: excepte  
 it bee in the feoffoure hymselfe. And it is greate  
 diuersitie betwene a clere gifte made to an Ab-  
 bot withoute condycion, and where it is made  
 with

# The xxxiiii. Chapter. Fo. 122b

with condicion, for whan it is made without condicion the acte of the Abbot onely shall not by the common lawe disherite the house but it bee in very few cases, but yet vpon diuers statutes the sufferance of the Abbot onely may disherite the house as by hys cesser, or by leuenge of a crosse vpon a house against the statute thereof made, in whiche case the house thereby shall lese the lande, and some saye & by & common law vpon his disclaimour in auowre a writ of ryghts of disclaimour lyeth, but yf & gift be vpon condicion it standeth neither with law nor conscience & the Abbot shoulde haue any more parsite or sure estate than was geuen vnto hym, and therefore as the sayd estate was made to the house vpon condicion so that estate may be auoyded for not parfourmyng of the condicion and I thinke verely that this I haue sayd is to be holden in this Realme bothe in lawe and conscience, and that the decrees of the churche to the contrarpe binde not in this case. But yf landes be geuen to an Abbot and to his cshente to the intente to fynde a Laumpe, or to geue certayne almes to poore menne, though the intente bee not in those cases fulfilled, yet the feoffour nor his heires maye not recntre for he reserued no recntre by expresse wordes, ne in the woordes whan he sayth to the intente to finde a Laumpe or to geue almes. &c. Is implied no recntre, ne the feoffoure nor hys heires shall haue no remedye in suche cases vntlesse it bee within the case of the statute of Westminster the seconde that geueth the Cessauit de Cantaria.

Q.ii. Whether

the. xxxv. Chapter.

¶ Whether a couenaunt made vppon a gift to the churche that it shal not be aliened (bee good.)

¶ The. xxxv. Chapter.

I N the saide summe called Summa rosella in the saide title alienacio, the. xiii. artycle is asked this question, whether a couenaunte made vpon a gift to y church y it shal not bee aliened be good. And y same question is moued again in y saide summe called rosella, in y title condicio y first article & in Summa Angelica, in y title Donatio prima, the. li. & lii. articles, & the intent of y question there is whether notwithstanding y condicio be good to some alienacions, whether y yet it be good to restrain alienaciōs for the redemcion of them y be in captiuitie vnder y infydels or for the greater aduantage to the house and though the better oppinion bee there that y condicion may not be broken for redempcyon of them that bee in captiuitie: yet it is in maner a hole oppinion that it maye be solde for y greater aduantage to the house, for it is sayde there that it maye not bee taken but that the intente of the geuer was so, and therefore they call y condicion that prohibiteth it to bee solde (condicio turpis) that is to say a vyle condicion, wherfore they regarde it not: but verelye as I take it yf a condicion maye restrayne any maner of alienacion thā it shal as well restraine alyenacions for the two causes before rehearsed as for any other causes, & though me thinketh that that condicio is good, & after

after the lawes of the realme that vppon giftes to the Church restrayneth alienacions, yet I shall touche one reason that is made to the contrary, that is this. There is a cleare ground in the lawe & yf a feoffement be made to a common parson in fee vppon condicion & the feoffee shall not alpen to no manne & condicion is voyde because it is contrarie to y<sup>e</sup> estate of a fee simple to bynde hym & hathe that estate & hee shoulde not alpen yf hee lyste and some saye & an Abbot that hathe lande to hym and to hys successours hath as hyghe and as parfyt a fee simple as hath a laye manne that hath lande to hym and to his heyres, and therefore they say that it is as wel againste the lawe of the realme to prohibyte that the Abbot shall not alpen as it is to prohibyte a laye manne thereof, and thonghe it bee therein true as they saye as to y<sup>e</sup> highnesse of the estate: yet me thinketh ther is great diuersitie betwene y<sup>e</sup> cases concernyng theyr alienacions, for whan landes bee geuen in fee simple to a common parson: the intent of the lawe is that the feoffee shall haue power to alpen, and yf hee dooe alpen, it is not agaynste the intent of the lawe ne yet againste the intent of the feoffour, but whan landes bee geuen to an Abbot and to his successours, the intente of y<sup>e</sup> lawe is and also of the geuer as it is to presume & it shoulde remayne in the house for euer, and therefore it is called Mortmaine, that is to saye a dead hande as who sayth & it shall abyde there alwaye as a thyng dead to the house. And therefore as I suppose the lawe wyl suffer that condicion to be good & is made to restrayne

Q.iii.

that

the .xxxv. Chapter.

that suche mortmayne should not be aliened and  
that yet it maye prohibite the same condicion to  
bee made vppon a feoffment made in fee simple  
to a manne and to his heires for y<sup>e</sup> is the moſte  
high the moſt free and the moſt pureſte ſtate y<sup>e</sup> is  
in the lawe. But the lawe ſuffreth ſuche a condi-  
cion to be made vppon a giſte in tale becauſe y<sup>e</sup>  
ſtatute prohibiteth y<sup>e</sup> no alienacion ſhoulde bee  
made thereof. And than as the law ſuffreth ſuch  
a condicion vppon a giſte in mortmayne, that is  
to ſaye, that it ſhall not bee aliened, to bee good,  
than it iudgeth y<sup>e</sup> condycion alſo accordyng to y<sup>e</sup>  
woordes, that is to ſaye, if the condicion bee ge-  
nerall y<sup>e</sup> they ſhal alien to no manne as this caſe  
is y<sup>e</sup> it ſhall bee taken generallye accordyng to  
y<sup>e</sup> woordes, and it ſhall not bee taken that y<sup>e</sup> in-  
tente of the geuer was otherwyſe thā hee expreſ-  
ſed in his giſte though parcaſe if hee were alſue  
himſelfe and the queſtion were aſked hym whe-  
ther he would be contented it ſhoulde be aliened  
for the ſayde two cauſes or not, hee woulde ſaye  
ye, but whan he is dead no manne hath auctori-  
tie to interpretate hys gyfte otherwyſe than the  
lawe ſuffereth, ne otherwyſe than the woordes of  
the giſt be. And if the condicion be ſpeciall that  
is to ſaye, that the lande ſhall not be alpyened to  
ſuche a man or ſuche a mā, than the condicio ſhal  
be taken accordyng to the woordes, and thā they  
may be aliened as for that condycion to anye or  
ther but to them to whome it is expreſſelye pro-  
hibite that the lande ſhoulde not be aliened to.  
And if the landes in that caſe bee aliened to one  
that is not except in the condicion, than he maye  
alpyene



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alyene the lande to him & is first excepted with-  
out breaking of the condicion, for condicions be  
taken straitely in y<sup>e</sup> lawe and withoute equite.  
And thus me thinketh & because the sayde con-  
dicion is generall and restrayneth all alienacy-  
ons, & it may not bee aliened neyther by the lawe  
of the realme ne yet by consyence, no more for  
the sayde two causes, than it maye for any other  
cause, and this case muste of necessitie be iudged  
after the rules and groundes of the lawe of the  
realme and after no other lawe as me semeth.

**I**f the patrone presente not wythin  
vi. monethes who shal present.

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**I**n the sayde summe called Summa rosella,  
in the title Beneficium in principio it is as-  
ked, if the patrone presente not wythin fyve mo-  
nethes who shall present and within what time  
the presentment muste bee made. And it is aun-  
swered there & yf the patrone presente not wyth-  
in. vi. monethes that the chapter shall haue fyve  
monethes to presente: and yf the chapter presente  
not within. vi. monethes, & than the Bishoppe  
shall haue other. vi. monethes. And yf he be neg-  
ligent, than the Metropolitane shall haue other  
vi. monethes, and yf he presente not than the pre-  
sentment is deuolute to the Patryarke. And yf  
the Metropolitane haue no superiour vnder the  
Pope, than the presentment is deuolute to the  
D. iiii. Pope

## the .xxxvi. Chapter.

**Pope.** And so as it is saide there the Archebys-  
shoppe shall supply & negligence of & Bysshoppe  
if he bee not exempte, and if he be exempt & pre-  
sentment immediately shal fall fro the Bysshoppe  
to the Pope. And as I suppose these diuerlities  
holde not in the lawes of the realme.

**D.** Than I pray thee shew me who shall pre-  
sent by the lawes of the realme yf the patron do  
not presente within this lyxe monethes. **S.**  
Than for defaulte of the patron the Bysshoppe  
shall presente. vnesse the kynge bee patron, and  
yf & Bysshoppe present not within sixe monethes  
than the Metropolitane shall presente whether  
the Bysshoppe bee exempte or not. And if & Me-  
tropolitane presente not wythin the tyme limy-  
ted by & lawe, than there bee diuers oppynions  
who shall presente, for some saye that & Pope  
shall presente, as it is sayde before, and some say  
the kynge shall present. **D.** What reason make  
they that saye the kynge should presente in that  
case. **S.** This is theyr reason they saye & the  
kynge is patrone paramounte of al the benefices  
within the realme. And they saye further & the  
kynge and his progenitours kynges of Englad  
without tyme of mynde haue hadde auctoritie to  
determine the ryght of patronages in this realm  
in theyr owne courtes, and are bounden to see  
theyr subiectes haue righte in that behalf with-  
in the realme, and that in that case fro him lyeth  
no appeale. And than they saye that yf & Pope  
in this case shoulde presente that than & kynge  
shoulde not onely lese his patronage peramount  
but also & he shoulde not some tyme bee hable to  
door

dooe righte to his subiectes.

D. In what case were that. S. It is in this case the lawe of  $\text{h}$  Realme is, that yf a benefyce fall voyde  $\text{h}$  the patron shall presente w<sup>th</sup> in. vi. monethes: and yf he dooe not that than  $\text{h}$  ordinarie shall presente, but yet the lawe is farther in that case that if the patrone presente before the ordinarie put in his Clerke that than the patron of righte shall enioye his presentment, and so it is thoughte the tyme shoulde fall after to the Metropolitane or to the Pope, and if the presentment shoulde fall to the Pope, than thoughte  $\text{h}$  aduowson abode styll voyde, so that  $\text{h}$  patrone mighte of ryghte presente, yet  $\text{h}$  patrone shoulde not knowe to whome hee shoulde presente, vnlesse he shoulde go to  $\text{h}$  Pope, and so he should faile of righte within  $\text{h}$  realme. And if parcase he wente to  $\text{h}$  Pope and presented an hable clerke vnto him and yet his clerke wer refused and another put in at  $\text{h}$  collaciō of  $\text{h}$  Pope or at  $\text{h}$  presentment of a straunger yet  $\text{h}$  patrone coulde haue no remedye for  $\text{h}$  wronge within  $\text{h}$  realme, for  $\text{h}$  encumbente myghte abyde styll oute of  $\text{h}$  realme. And therefore the lawe wyll suffer no tittle in this case to fall to  $\text{h}$  Pope. And they saye that for a lyke reason it is that  $\text{h}$  lawe of the Realme wyll not allowe an excommen- gement that is certifyed into  $\text{h}$  Kynges court, vnder the Popes Bulles. For if  $\text{h}$  partye offered sufficient amendes, and yet coulde not obtaine his letters of absolucion,  $\text{h}$  king shoulde not knowe to whom to write for  $\text{h}$  letters of absolucion, and so  $\text{h}$  partie coulde not haue right, and that

*Howe & Summ<sup>r</sup> the  
to lay p<sup>r</sup>ot*

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that the lawe wyl in no wyse suffer. D. The patrone in that case maye presente to the ordynary as long as y<sup>e</sup> churche is voyde, and yf the ordynary accepte hym not, the patron may haue his remedy agaynst him within the Realme.

But yf the Pope wyl put in an encumbent before the patrone presente, it is reason y<sup>e</sup> hee haue the preferment as me semeth before the king.

S. Whan y<sup>e</sup> ordynary hath surcelled his tyme he hath losse his power as to that presentment, specially if y<sup>e</sup> collacion be deuolute to the Pope.

And also whan y<sup>e</sup> presentmente is in the Metropolitane he shall put in y<sup>e</sup> Clerke himselfe & not the ordynary, and so there is no defaulte in the ordinarie though he present not the Clerke of the patrone if his time be past, and so there lyeth no remedy agaynst him for the patrone. D.

Though the encumbente abyde styll out of the Realme yet maye a Quare impedit lye agaynst hym within the Realme, and if the encumbente make default vpon y<sup>e</sup> distresse and appeare not to shewe his tittle: than the patrone shall haue a writ to the Bisshoppe according to y<sup>e</sup> statute, and so he is not without remedie. S.

But in this case he cannot be sommoned attached, nor distrained, within the Realme. D. Hee maye bee sommoned by the churche as the tennaunt maye in a wryt of rpyghte of aduowson. S.

There y<sup>e</sup> aduowson is in demaunde, and here the presentmente is onely in debate, and so hee can not bee sommoned by the churche here no more than if it were in a wrytte of annuities, and there the common returne is (q<sup>uod</sup> clericus est & beneficiatus non

non habens laicum feodum ubi potest summoneri.) And though he might be summoned in the Church, yet he might neither bee attached nor distrained there, and so his patron should be without remedye. D. And yf he were without remedye, he shoulde yet be in as good case as he shoulde be if his king should present, for if his title should be geuen to his kyng, his patrone had lost his presentment clerely for his tyme though his church abide still voyde. For I haue heard saye in such presentmentes no time after his lawe of his realme renneth vnto the kyng. S. That is true, but ther his presentment shoulde be taken fro him by right and by his lawe and here it shoulde bee taken fro hym agaynst the lawe, and there as his lawe could not help him & his the law will not suffer. D. yet me thinketh alway his the title of the lyps in such case is geuen by the lawe of his church and not by his temporall lawe, and therefore it forseth but lytle, what his temporall law wil in it as me semeth. S. In such countreys where his Pope hath power to determine his righte of temporall thynges, I thinke it is as thou sayest, but in this realme it is not so. And his right of presentment is a temporal thing, and a temporall inheritance, and therefore I thinke it belongeth to his kinges lawe to determine, and also to make lawes who shal present after his. vi. monethes as well as before, so his title of examination of abilitie or none abilitie be not therby taken fro his ordinaries, and in like wise it is of auoydaunce of benefices, that is to saye, than it shall bee iudged by his Kynges lawes whan a benefice shalbe sayde voyde & whan not  
and



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and not by the lawe of  $\text{\textcircled{C}}$  Church as whan a parson is made a Bishoppe or accepteth another benefice without lycence, or resygneth. or is depriued, in these cases  $\text{\textcircled{C}}$  common lawe sayth that the benefices bee voyde, & so they should be, though a lawe were made by  $\text{\textcircled{C}}$  Church to  $\text{\textcircled{C}}$  contrary, and so yf the Pope should haue any title in this case to presente, it shoulde bee by the lawe of the Realme. And I haue not seen ne heard that the lawe of the Realme hath geuen any tittle to the Pope to determyne any tempozall thyng  $\text{\textcircled{C}}$  maye be lawfully determined by the kynges court.

**D.** It semeth by that reason that thou haste made nowe that thou preferrest the Kinges aucthoritie in presentmentes before the Popes, and that me thinketh shoulde not stande wyth  $\text{\textcircled{C}}$  lawe of god: sithe the Pope is the vicar general vnder godde. **S.** That I haue sayde proueth not  $\text{\textcircled{C}}$ , for the highest preferment in presentmentes is to haue auctoritie to examine  $\text{\textcircled{C}}$  abilitie of the parson that is presented, for yf  $\text{\textcircled{C}}$  presenttee bee able, it suffiseth to the dyscharge of  $\text{\textcircled{C}}$  ordynarpe, by whom so euer he be presented and that aucthoritye is not denyed by the lawe of  $\text{\textcircled{C}}$  Realme to belonge alwaye to the spirituall iurisdiction, but my meanyng is that as to  $\text{\textcircled{C}}$  ryght of presentmentes and to determyne who oughte to presente and who not and at what time, and whan  $\text{\textcircled{C}}$  church shall bee iudged to bee voyde, and whan not, belongeth to  $\text{\textcircled{C}}$  king & his lawes, for els it were a thyng in vayne for hym to holde plee of aduowsons or to determyne the righte of patronage in his owne courtes and not to haue aucthoritye

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authoritie to determine the right therof, & these  
claimes semeth not to bee against & lawe of god.  
And so me semeth in this case & presentmēt is ge-  
uen & king. D. And if & king shold haue right to  
present thā might & churche happen to contynue  
void for euer for as we haue said before no tyme  
renneth to & king in such presentmētes. S. If a-  
ny such case happē if & king presēt not thā may  
& ordinary set in a deputy to serue & cure as hee  
may do whā negligēce is in other patrons & may  
presēt & do not, & also it cannot be thought & the  
king which hath & rule & gouernaunce ouer the  
people not only of their bodie but also of theyr  
soules wil hurt his cōsciēce & suffer a benefice co-  
tinually to stand wout a curate no more than he  
doth in aduowsons & be of his own presentmēt.

¶ Whether the presentment and collaci-  
on of all benefices and dignities,  
voydying at Rome belong on-  
lye to the Pope.

¶ The. xxxvii. Chapter.

I N the same summe called Summa rosella in  
the title Beneficium primum. in the. xiii. arty-  
cle. It is saide that benefices, dignities, and per-  
sonages, voydying in the court of Rome may not  
be geuen but by the Pope & likewise of the Po-  
pes seruantes and of other that come and goe  
fro the courte, if they dye in places nye to the  
courte within twoo dayes iourney, all these be-  
longe to the Pope, but yf the Pope present not  
with

## the. xxxvii. Chapter.

within a moneth: than after the moneth they to whom it belongeth to presente maye present by themself onely or by theyr great generall if they be in farre parties, & these sayinges holde not in þe lawes of the realme. **D.** What is the cause, þe they holde not in this realme as well as in all other realmes. **S.** One cause is thys. The king in this Realme accordyng to the auncient right of his crowne, of all his aduowsons that be of his patronage oweth to present. And in likewise other patrons of benefices of theyr presentment, and þe plee of the ryghte of presentmentes of benefices within this Realme belonge to the kyng and his crowne. And these tytles cannot bee taken fro the kyng and his subiectes but by theyr assent, and so the lawe is made therein to put away þe lytle byndeth not in thys Realme and ouer þe before the statute of. xxv. of Edward 4. iii. there was a great inconueniencence and mischiefe by reason of diuers prouisions and reseruacions þe the Pope made to benefices in thys Realme contrarpe to the olde ryghte of þe king & other patrons in this Realme as wel to þe archbishopps, Bishopps, Deanries, and Abbeys: as to other dignities and benefices of the church. And many times aliens therby had benefices within the realme that vnderstode not the Englyshe tounge, so þe they coulde not counsaile ne comfort the people whan nede requyred, and by þe occasion great ryches was conuayd out of the Realme, wherefore to auoyde such inconueniencences: it was ordayned by the sayd statute þe all patrons, as well spirituall as temporall should

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shoulde haue their presentmentes freely, and in case that collacion or prouision were made by y<sup>e</sup> Pope in disturbaunce of anye spirituall patron that than for that tyme the kynge shoulde haue the presentment, and if it were in disturbaunce of any laye patron: that than if the patron presented not within y<sup>e</sup> halfe yere after suche voidance nor the Bishoppe of the place wythin a moneth after the halfe yere: that than the kynge shoulde haue also the presentment, and that the kynge shoulde haue the profites of the benefices so occupied by prouision excepte abbeys and priours & other houses that haue colage and couent, and there the colage and couent to haue the profites and because y<sup>e</sup> statute is generall & excepteth not suche benefices as shall voyde in the courte of Rome or in suche other place as before appereth therefore they be taken to bee within the prouision of the saide statute as wel as the benefices that voyde within y<sup>e</sup> Realme, and all prouisors and executors of y<sup>e</sup> saide collacions and prouisions, & al theyr attorneys, notaries, & maynteners shall bee out of y<sup>e</sup> protection of the kynge, and shall haue lyke punishment as they shoulde haue for executing of benefices voyding within the realme. D. But I cannot see how y<sup>e</sup> sayde statute may stande with conscience y<sup>e</sup> so farre restraineth y<sup>e</sup> Pope of his libertie, whiche as me semeth he ought i this case right to haue. S. Because as I suppose y<sup>e</sup> patrons oughte of right to haue their presentmentes vnder such maner as they claime the i this realme as I haue sayd before, & as in y<sup>e</sup> xxvi. cha. of this boke appereth more at large & also forasmuch as it appereth euidently y<sup>e</sup>

## the. xxviii. Chapter.

that great inconuenience folowed vppon & sayd  
prouisions, and that & saide estatute was made  
to auoyde the same, whiche sythe that time hath  
been suffered by the Pope and hath bene alway  
vled in this realme without resistance that the  
sayde estatute shoulde therfore stand with good  
conscience.

¶ If a house by chaunce fall vppon a  
horse that is borowed who shall  
beare the losse.

## ¶ The. xxxviii. Chapiter.

I N the sayde summe called Summa rosella, in  
the title Casus fortuitus, in the begynnyng  
is put thys case yf a manne lende to another a  
horse whyche is called there Depositum, and a  
house by chaunce falleth vppon the horse whe-  
ther in that case he shall aunswere for the horse.  
And it is aunswere there that yf the house wer  
lyke to fall that than it canne not bee taken as a  
chaunce but as the defaulte of hym that hadde  
the horse deliuered to him. But yf the house wer  
stronge and of likelyhoode and by common pre-  
sumpcion in no daunger offallyng but that it fell  
by sodaine tempeste or suche other casualty that  
than it shall bee taken as a chaunce, and he that  
hadde the keping of the horse shalbe discharged,  
and thoughe his diuersitie agreeth w the lawes  
of the Realme, yet for the more playner decla-  
ration thereof and for other lyke cases & chaun-  
ces that may happen to goodes that a man hath



in hys keepynge & be not hys owne. I shal adde  
 a lyttle more thereto & shalbe somewhat necessa-  
 ry as me thinketh to & orderinge of conscience.  
 fyrst a mā may haue of another by way of lone  
 or borowynge, money, corne, wine, and suche o-  
 ther thynges where the same thyng can not  
 be deliuered if it be occupied, but another thig  
 of lyke nature & like value must be redeliuered  
 for it, and such thinges he & they be lent to, may  
 by force of & lone vse as hys owne. And there-  
 fore if they perishe, it is at his ieopardye & thys  
 is most properly called a lone. Also a man maye  
 lend to another a horse, an oxe a cart, or suche o-  
 ther thynges & maye bee deliuered agayne, and  
 they by force of & lone may be vsed and occupi-  
 ed reasonably in such maner as they were boro-  
 wed for, or as it was agreed at the time of the  
 lone & they shoulde be occupied, and if such thi-  
 ges be occupied otherwysse than accordynge to  
 the intent of the lone, and in & occupacion they  
 perissh, in what wise soeuer they perissh, so it be  
 not in defaulte of the owner, he & borrowed them  
 shalbe charged therewith in lawe and conspēce,  
 and if he & borrowed them occupy them in suche  
 maner as they were lent for, and in & occupacy-  
 on they perissh in defaulte of him & they wer let  
 to: than he shal aunswere for theim. And if they  
 perissh not throught his defaulte, than he & ow-  
 eth them shal beare the losse. Also if a man haue  
 goods to kepe to a certain day for a certain re-  
 cōpence for & kepig he shal stand charged or not  
 charged aft as default or no default shalbe in hi  
 as befoze appereth, & so it is if he haue nothinge

## the xxxviii. chapter

for þe keeping, but if he haue for þe keeping & make  
promes at the time of the deliuey to redeliuer  
them safe at hys perill, than he shal be charged  
with al chaunces þe may fall. But if he make þe  
promise and haue nothing for keeping. I thinke  
he is bound to no such casualties, but þe wil-  
ful & his own default, for þe is a nude oz a na-  
ked promise wherupon as I suppose no accio  
lieth. Also if a man find goodes of another if  
they be after hurt oz lost by wilful negligēce, he  
shal be charged to the owner, but if they be lost  
by other casualtye as if they be laid in a house  
þe by chaunce is burned, oz if he deliuer them to  
another to kepe that renneth awaye with the,  
I thinke he be discharged, & these diuersities  
hold most commonly vpon pledges, oz where a  
man hireth goodes of hys neighbour to a certen  
day for certain money, & mani other diuersities  
be in the law of the realme what shal be to the  
ieopardy of þe one, & what of þe other, which I  
will not speake of at this time. And by thys it  
may appere þe as it is commonly holden in the  
lawes of Englande if a common carier goe by  
bywayes that be daungerous for robbing, oz  
dyne by night oz in other vnconuenient time  
& be robbed, oz if he ouercharge a horse wherby  
he falleth into the water oz otherwise, so þe the  
stuffe is hurt oz impeyred, þe he shall stand char-  
ged for hys misdemeanour, & if he would prase  
refuse to cary it, onles promise wer made vnto  
hym þe he shal not be charged for no misdemea-  
nour þe shold be in him, that promise wer void.  
For it wer against reso & against good maners  
and

and so it is in al other causes like. And al these diuersities be graſted by ſecondary concluſions diſriued vpon ꝑ law of reſon without any eſtate made in that behalfe. And peraduenture lawes and the concluſions therein be the more plain and the more opẽ. For if any ſtatute were made therein, I think verely mo doutes & queſtions would riſe vpon that ſtatute than doth now whan they be onely argued & iudged after the comon law.

¶ If a prieſt haue wonne much goodes by ſaying of maſſe, whether he may giue thoſe goodes or make a will of them.

¶ The xxxix. Chapter.

I N the ſaid ſūme colled *Sūma raſella* in the title clericus quartus ꝑ third article, is aſked this queſtion if a prieſt haue won much goodes by ſaying of maſſe whether he may gyue thoſe goodes or make a wil of the, wherto it is answered there that he may giue them or make a wil of the ſpecially whā a mā bequetheth money for to haue maſſes ſaid for hī, & that like law is of ſuch thiſes as a clarke winneth by ꝑ reſō of an office. For it is ſaid there ꝑ ſuch thiſes cōe to him by reſō of his own pſon, which ſayinges I think accord w the law of ꝑ reime. But for as much as i ꝑ ſaid article & in diuers other places of the ſaid chapter, & in diuers other chapiters of the ſaid ſūme is put gret diuerſity betwene ſuch goodes as a clarke hath by reaſon of hys

## the. xxxix. chapter

church and such goodes as he hath by reson of his person, and y he must dispose such goodes as he hath by reason of his church in such manner as is appointed by the law of y church, so that he may not dispose them so liberally as he may the goodes that come by reson of his own person, therfore I shall a little touch what spirituall men may doe with their goodes after y law of the realme.

First a Bishop of such goodes as he hath with the Deane and the Chapter he may neither make gift nor bequest, but of such goodes as he hath of his own by reson of his church or of the gift of his auncesters or of any other, or of his patrimony he may both make giftes and bequestes lawfully. And an Abbot of y goodes of his church may make a gift & y gift is good as to y law. But what it is in conscience that is after the cause & intent & quality of the gift for if it be so much y it notably hurteth y house or the couent, or if he giue away the bokes, or y chalices, or such other thiges as belong to y seruice of god, he offendeth in conscience, & yet he is not punishable in y law, ne yet by a Sub pena after some men ne in none otherwise but by the law of y church as a waster of y goodes of his monastery. But neuertheles I will not fully hold y opinion as to y that belögeth necessarily to y seruice of god, whether any remedy lie against him or not, but remit it to y iugement of other. And a Deane & a Chapter and a maister & brethren of goodes y they haue to the self. And also of goodes y they haue with y Chapter

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Chapiter and bꝛethꝛ & same diuersity holdeth  
as appereth before of a Bishop and the Deane  
and chapiter, except that in & case of a maister &  
bꝛethꝛen the goodes shalbe ordered as shalbe  
assigned by the foundacion. And moze ouer of a  
person of a church vicar, and chantry pꝛiest, or  
such other, al such goodes as they haue, as wel  
such as they haue by reason of & personage, vi-  
carage, or chauntry, as & they haue by reason of  
their own person they may lawfully giue and  
bequeth where they will after the comon law.  
And if they dispose part among their parishēs,  
and part to & bilding of churches, or giue part  
to the ordinary, or to pore men, or in such other  
maner as is appointed by the lawe of & church  
they offende not therin, onles they think the-  
self bounden therto by duty & by auctority of &  
lawe of the church, not regarding the kynges  
lawes, for if they do so it semeth they resist the  
ordinaunce of god, which hath giuen power  
to Princes to make lawes. But there as the  
Pope hath soueraintie in tempoꝛal thinges as  
he hath in spiritual thinges, there some say that  
& goodes of pꝛiestes must in consciēce be dispo-  
sed as is cōteined in & said sūme, but & holdeth  
not in this realme, for & goodes of spiritual mē  
be tēpoꝛal in what maner soeuer thei cōe to the  
& must be ordered after & tempoꝛal law as the  
goodes of the tempoꝛal mē must be. Howbeit if  
there were a statute made in thys case of lyke  
effect in many pointes, as the law of & church  
is. I thinke it wer a ryght good and a profita-  
ble statute.



The.xl.chapter.  
Who shall succede a clarks  
that dieth intestate.

The.xl.Chapter.

**I**n the sayd summe called rosella in the Cha-  
pitre Clericus quartus the. vii. article, is as-  
ked thys question, who shal succede to a clarks  
that dieth intestate. And it is aunswered & in  
goodes gotten by reson of the church, & church  
shall succede. But in other goodes his kinsme  
shall succede after the order of the lawe, and if  
there be not kinsme than & church shal succede  
And it is there sayd further & goodes gottē by  
a Canon seculer by reason of his church or pre-  
bend shal not go to hys successour in the pre-  
bend but to the chapitre. But where one & is  
beneficed is not of & congregacion, but he hath  
a benefice clerely seperate, as if he be a person  
of a parish church, or is a president, or an Arch-  
deacon not beneficed by & chapter, thā & goods  
gotten by reason of his benefice, shal go to hys  
successor and not to the Chapetre, and none of  
these sayinges hold place in the lawes of Eng-  
land. **D.** What is than the law if a person  
of a church or a vicar in the cuntrey die intestate  
or if a Canon seculer be also a person and haue  
goodes by reason therof & also by a prebend &  
he hath in a cathedral church & he die intestate  
who shall haue hys goodes. **S.** At the co-  
mon law & ordinary in all these cases may ad-  
minister the goodes and after he muste commit  
administracion to the next saythfull frendes

of hym þ is dead intestate that wil desyre it as he is bounde to doe where laye men that haue goodes dye intestate. And if no man desyre to haue administraciō than þ ordinary may ad= minister & se the detts payd, & he must beware þ he pay the detz after such order as is appoin= ted in the comon law, for if he pay dettes vpon symple cōtractes before an obligacyō he shalbe cōpelled to pay the det vpon the obligacion of his own goodes yf there be not goodes suffi= cient of hym that died intestate, & though it be suffred in such case that the ordinary may paie pound & pound like þ is to apporciō, & goodes among þ dettours after his discreciō, yet by the rigor of the comon law he might be charged to him þ can first haue his iudgemēt against him. And ferthermore by that is said afoze in þ laste chapitre appeareth if a Bishop þ hath goodes of his patrimony, or a maister of a collage, or a Deane of goodes that they haue of their own only to thesēlf die intestate, þ the ordinary shal cōmit administracion therof as before appereth & if they make executours than the executours shall haue þ ministracion therof. But þ heires nor the kinsmen by that reason only þ they be= heires or of kin to him þ is dicessed shal haue no meddling with his goodes except it be by cus= tome of some cuntreys where the heires shall haue their lomes. Or where the children & detz & legacies payde, shal haue a reasonable part of the goodes after the custome of the countrey.

**A**ddicion.

R.iiii.

31

## The.xli.chapiter.

**I**f a man be outlawed of felony or be  
attainted for murder or felony, or  
that is an *ascismus* may be  
slaine by every sträger.

## The.xli.Chapiter.

**I** Tappereth in y<sup>e</sup> said summe called *Summa*  
*angelica* in the.xxi. Chapiter in the title of  
*Ascismus* the.ii. ¶ Paragraf, that he is an *Ascis-*  
*mus* that wil slay men for money at the instāce  
of every man that wil moue him to it, & such a  
man may lawfully be slaine not onely by the  
iudgc. but by every priuate person. But it is  
sayd there in the fourth Paragrafe, y<sup>e</sup> he muste  
first be iudged by y<sup>e</sup> law as an *Ascismus* or he  
may be slaine or hys goodes seased. And it is  
said farther there in the.ii. Paragraf, y<sup>e</sup> also in  
cōscience such an *Ascismus* may be slain if it be  
done through a zeale of iustice & els not. Is not  
y<sup>e</sup> law of the realme likewise of men outlawed,  
abiured, or iudged for felony.

**S.** In the law of y<sup>e</sup> realme there is no such  
law y<sup>e</sup> a man shalbe adiudged as an *Ascismus*  
ne if a man be in full purpose for a certein sūme  
of money y<sup>e</sup> he hath receiued to slay a mā: yet it  
is no felony, ne murther in the law till he hath  
done the act for intēt in felony nor murther is  
not punishable by y<sup>e</sup> comon lawe of the realme  
though it be deadly sinne afore god, but in tre-  
son or in some other particuler cases by statute  
y<sup>e</sup> intent may be punished. And though a mā in  
such case kil a mā for money: yet he shal not be  
attainted y<sup>e</sup> he is an *Ascismus*, For as it is said  
before:

befoze:there is no such terme of *Uscitinus* in  
 law of the realme but he shal in such case be ar-  
 rained vpon the murther. And if he cōfesse it oꝝ  
 pleade & he is not guilty and is found guilty by  
 xii. men:he shall haue iudgemēt of life & of me-  
 bre, & shall forfeit his lādes and goodes. And  
 like law is if in appeale brought of & murther  
 he stande dumbe and will not aunswere to the  
 murther he shalbe attainted of & murther and  
 shal forfeit life, lādes, and goodes, but if he ar-  
 rayned of the murther vpon an inditement at  
 & kinges suit, & therupon standeth dōmbe and  
 will not aunswere, there he shal not be attainted  
 of & murther, but he shal haue paine fozt & dure  
 (& is to say) he shalbe pressed to death & he shal  
 there forfeit his goodes, & not his lādes. But  
 in none of these cases (& is to say) though a mā  
 be outlawed foꝝ murther oꝝ felony, oꝝ be abiu-  
 red oꝝ & he be otherwise attainted: yet it is not  
 lawfull foꝝ any mā to murther him oꝝ slay him,  
 ne to put him in execusion but by aucthority of  
 the kinges lawes. In so much & if a mā be ad-  
 iudged to haue painefoꝝte and dure, & the offi-  
 cer beheadeth him, oꝝ on the contrarywise put-  
 teth him to paine fozt & dure, where he shoulde  
 behead him, he offendeth the law.

And if an officer which hath auctozite to put  
 a man to death (may not put him to death but  
 according to & iugement) thā me think it shold  
 folow that moze stronger a straunger may not  
 put such a man to death of his owne auctozitye  
 without commaundement of the law.

But if & iugement be that he shalbe hanged  
 in

## The.xlii chapter.

in chaines, & the officer hangeth hym in other thinges & not in chaines, I suppose he is not guilty of hys death, but some saye he shall there make a fine to the king because he hath not followed the wordes of the iudgement.

Also if a man that is no officer would arrest a man that is outlawed, abiured, or attainted of murther or felony as is aforesaid, & he disobeieth the rest, & by reaso of  $\S$  disobedience he is slayn: I suppose the other shal not be empached for hys death, for it is lawfull vnto euery man to take such persons & to bring them forth  $\S$  they may be ordered according to the law. But if a capias be directed vnto  $\S$  sherife to take a mā in an acciō of det or trespass: there no man may take  $\S$  man but he haue auctoritie from  $\S$  sherife. And if any man attempt of hys own auctority to take him and he resisteth & in  $\S$  resisting is slain: he that wold haue takē him is guilty of hys death.

### Addicion.

Whether a man shalbe bounden by the act or offence of his seruant or officer.

## The.xlii. Chapiter.

I  $\S$  sayde summe called Summa angelica, in the title domin<sup>o</sup>.iiii. Paragraf. Is asked thys questiō, whether a mā shalbe charged for hys household. And it is said there that he shall  
whan



The.xlii.chapter fol.134.

When the householde offendeth in an office or  
 ministrpe & the maister is & chief officer of, and  
 he hath the worke and & profit of the household.  
 For it shalbe his default & he wold chuse such  
 seruantes, for he ought to appoint honest per-  
 sons, but it is sayd there, & is to be vnderstand  
 Ciuilly and not criminally, wherby as is sayd  
 there he & is a gouernour is bound for the of-  
 fence of his officers, and & the same is to be hol-  
 den of a capitaine, that he shal be bounde for &  
 offence of his squiers. And an host for hys gest  
 and such other. Neuertheles it is laide there &  
 certain doctours there reherfed, & thereto that  
 if the office be an opē or a publike office, as an  
 office of power or other like. It suffiseth to  
 bring forth him that offended. But it is other-  
 wise. If it be not a publike office, but an host  
 or a tauerner or other like. But yf & household  
 offended not in & office, & lord is not bounde as  
 to & law: but in cōscience, he is bound if he wer  
 in default by not correcting the for he is bound  
 to correct them both by word & example, and if  
 he fynd any in corrigible he is bound to put him  
 away except & he hath presumptions that if he  
 do so, he will be the worse, and than he may doe  
 that he thinketh best, and he is excused and els  
 not. For to such parsons it is sayd. Error qui  
 nō resistitur: approbatur (& is to say) an error &  
 is not resisted is approued. And though diuers  
 of & saienges befoze reherfed agre with & law  
 of & relme, yet all do not so, & also tho & do, are  
 to be obserued by auctoritie of & law of & relme  
 & not by & auctozite alleged in & said paragraf.

And

*up to 1512*  
*Tr. R.*

*an host for*  
*his gest*

*an host or a*  
*tauerner.*

## The .xlii chapter.

And therfore I intend to treat soewhat where  
 y maister shalbe charged by his seruant or de-  
 putie, or by them y be vnder him in any office  
 and where not, & than I entend to touch some  
 other thinges where y maister after y lawes of  
 the realme shalbe charged by the act of his ser-  
 uant in other cases not concerning offices, and  
 where not.

*accompt*

First if a man be committed to warde vpon  
 arrerages of accompt, and the keper of the  
 prison suffreth him to go at large: than an accio  
of det shal lie agaynst him. And if he be not suf-  
 ficient, than it lieth against hym y committed y  
 prison vnto him, and that is by reason of y sta-  
 tute of wilstm the.ii.the.xi.chapiter.

Also if Bailifes of franchiseles that haue re-  
 turne of witz make a false returne, the partye  
 shall haue auerinet against it as well of to litle  
 issues as of other thynges as well as he shall  
 haue against y Sherife, but al the punishment  
 sha'be only vpon the bailife & not vpon y lord of  
 the franchise, & that doth oppere by the statute  
 made in the first yere of king Edward the.iii.  
 y fyrst chapiter. But if an vnder Sherife make  
 a returne wherupō y Sherife shalbe amerced  
 there y high Sherife shalbe amerced for y re-  
 turne is made expressely i hys name. But if it  
 be a false returne wherupon an accion of discent  
 lieth, in y case it may be brought againste the  
 vnder Sherife, & see therof the statute that is  
 called statutu de male returnantibus breuia.

*Heale*  
*2. hys*

Also if the kinges butler make deputies he  
 shal aunswer for his deputies as for himselfe.

Is appereth in y<sup>e</sup> statute made in the.xxb.yere  
of king Edward the thirde. De prodicionib<sup>9</sup>  
the.xxi.Chapiter.

Also in the statute that is called Statutum  
scaccarii, it is enacted among other thinges y<sup>e</sup>  
no officer of y<sup>e</sup> eschequer shal put any clarke vn-  
der him but such as he will aunswere for. And  
for as much as y<sup>e</sup> statute is generall: it semeth  
y<sup>e</sup> he shal answere as well for an vntrouth in  
any such clarke as for an ouersight.

Also in the.xliii.yere of king Edward y<sup>e</sup>.iii.  
the.ix.Chapiter, it is enacted y<sup>e</sup> al Gailes shal-  
be adioyned again to y<sup>e</sup> shires, and y<sup>e</sup> the Shi-  
rife shall haue the keping of them, and that the  
Sherife shall make such vndergardeins for y<sup>e</sup>  
which they wil aunswere. And neuerthelesse I  
suppose y<sup>e</sup> if there be an escape by default of the  
Gailler, that y<sup>e</sup> king may charge y<sup>e</sup> Gailler if he  
wil. But it is no doubt but he may charge the  
Sherife by reason of his statute if he wil. But  
if it be a wilfull escape in y<sup>e</sup> Gailler which is fe-  
lony in him, the Serife shall not be bounde to  
answere to y<sup>e</sup> felony ne none other but y<sup>e</sup> Gailler  
himselke and they that assented to him.

Also if a man haue a shryffewike, constable-  
ship, or Baillywike in fee, wherby he hath y<sup>e</sup> ke-  
ping of prisoners, if he let any to repleuin y<sup>e</sup> be  
not repleuishable and therof be attaint, he shal  
lese y<sup>e</sup> office. &c. And if it be an vndershryffe, cu-  
stable, or Bilife y<sup>e</sup> hath the keping of the prison  
that doth it without knowlege of the lorde he  
shall haue imprisonment by .iii.yeres, & after  
shall be ransomed at the kinges will, as appe-  
reth

*the Gailler*

*But no doubt  
he may charge  
the Gailler*

*say by the law*

*the*

## The. xlii. Chapter

reth in the statute of westm the first ƿ. xv. chapter. And so it appereth ƿ in this case he that is the lord of the prison is not bound to answer for the offence of them that haue the rule of the prison vnder hym, but that they shall haue the punishment themself for their misdeemeanour.

Also there is a statute made in the. xxvii. yere of king Edward the. iii. the. xix. chapter, ƿ is called the statute of the staple, wherby it is ordeined ƿ no marchant ne none other mā shall not lese their goodes for ƿ trespass or forfait of their seruantes, onlesse it be by comaundement of his maister, or that he offend in the office that hys maister hath put him in, or els that the maister shall be bound to an answer for the dede of hys seruant by the law marchant, as in some place it is vsed.

Also it is enacted in the. xiiii. yere of kynge Edward the. iii. the. viii. chapter that wapentakes & hundredes that be seuered from the countees shalbe adioined again vnto them, and that if the sherife hold them in hys own hādes that he shall put in them such Bailifes ƿ haue landes sufficient, & for that which he wyl answer, & that if he let them to ferme, that they be let to the auncient ferme, but after it is prohibited by the statute of ƿ. xxiii. yere of king Henry the. vi. the. x. Chapter. That no sherife shal let his Bailiwykes nor wapentakes to ferme. And whan they be ones in the Sherifes owne handes & the sherifes putteth in Bailifes, they be but as vnder bailifes to the king & the sherife the high bailife & they in maner ƿ sherifes seruantes

servantes & put in only by him. And therefore by  $\text{§}$  said statute of king Edward  $\text{§}$ . iiii. He shal answer for the if they offend in their office, but if  $\text{§}$  sherife let them to ferme: than though the sherife offend  $\text{§}$  statute in that doing: yet whether he shalbe charged for their misdemeanour in  $\text{§}$  office or not, is a gret dout to some mē, for they say  $\text{§}$  this statute is only to be vnderstād where the bailiwikes be in the sherifes handes but here they be not so, ne  $\text{§}$  bailifes be not hys servantes but his fermours. And therefore they say that if  $\text{§}$  sherife shalbe charged for them. It is by the comō law & not by  $\text{§}$  statute also said.

Also in the. ii. yere of king Henry the. vi. the. xlii. chap<sup>r</sup> it is enacted  $\text{§}$  officers by patent in euery court of the king that by vertue of the<sup>r</sup> office haue power to make clarkes in the sayde courtes shalbe charged & sworne to make such clarkes vnder the for whom they wil answer.

Also  $\text{§}$  Hospitlers, & templers be p<sup>r</sup>hibit they shal hold no p<sup>r</sup>ee that belongeth to the kynges courtes vpon paine to yeld damages to the p<sup>r</sup>ty greued & to make rāsome to  $\text{§}$  king & that the superiours shal answer for their obediēces as for their own dede, w<sup>ch</sup> m<sup>ch</sup> the. ii.  $\text{§}$  xlii. chap<sup>r</sup>.

Also the sercgant of  $\text{§}$  Cately shal satisfy al the detys, damages, & executions  $\text{§}$  shal be recovered against any that is puruey<sup>r</sup> or achatur vnder him &  $\text{§}$  assende against the statute of. xxxvi. of Ed. the. iii. or against this statute of. xlii. of Henry  $\text{§}$ . vi. In case the puruey<sup>r</sup> or achatur be not sufficient &c. And the party plaintife shal haue a scire facias against the sayd sercgant

*officers by patent  
charged & sworn  
to make such  
clarkes*

*Clark of  
Cately*



## The.xlii.Chapter

Sergeaunt in this case to haue execution as appeareth in the.xlii.yere of Kyng Henry the.vi. the.i.chapter.

*Rest to p<sup>2</sup> by  
apex after*  
Also if a man be sent to prison vpon a statute marchaunt by  $\frac{1}{2}$  Mayre, before whom  $\frac{1}{2}$  recognisance was taken, and the Gailler wil not receiue him, he shal aunswer for the det if he haue where with, and if not than hee shall answere  $\frac{1}{2}$  committed the Gailler to him as appeareth in  $\frac{1}{2}$  statute called the statute marchaunt.

*over raygion  
to the*  
Also if outrageous tolle be taken in  $\frac{1}{2}$  towne marchant, if it be  $\frac{1}{2}$  kynges towne let to ferme, the kinge shall take  $\frac{1}{2}$  fraunchese of the market into his handes. And if it be done by the lord of the towne: the king shall do in likewise. And if it be done by  $\frac{1}{2}$  Bailife vnknowyng  $\frac{1}{2}$  Lord: he shal yeld agayne as much as he hath taken, and shal haue imprisonmēt of.xl.dayes. And so it appeareth  $\frac{1}{2}$  the Lorde in thys case shal not aunswer for his Bailif Westm the first  $\frac{1}{2}$ .xxx.chapt. And in all  $\frac{1}{2}$  cases before rehearsed where the superiour is charged by the default of hym that is vnder hym, he in whose default his superiour is so charged, is bounde in conscience to restore hym  $\frac{1}{2}$  is so charged throughe his default. Excepte  $\frac{1}{2}$  case before rehearsed of the hospitellers, for all that the obediencer hath, is the superiours if he wil take it. And therefore what recōpence shall be made by the obediencer in  $\frac{1}{2}$  case, is all at the will of  $\frac{1}{2}$  superiour. And nowe I entende to shewe the some perticuler cases, where  $\frac{1}{2}$  master after  $\frac{1}{2}$  lawes of the realme shall be charged by the act of his seruauant, Bailife, or deputie, & where

*Done*

The.xlii.chapter. Fol.137.

where not, and so for to make an ende of thys Chapiter.

¶ Firke for trespass of batery or of wrongfull enter into landes or tenementes: ne yet for felonye or murther, the maister shal not be charged for hys seruaunte, onlesse he did it by hys commaundement.

¶ Also if a seruaunt bozowe money in hys maisters name: the maister shall not be charged with it, onlesse it come to hys vse, and that by hys assent, and the same lawe is if the seruaunt make a contracte in his maisters name, the contracte shall not binde his maister, onles it were by hys maisters commaundement, or if it came to the maisters vse by his assent. But if a manne sende hys seruaunt to a fayze or market to bye for him certayne thinges, though he commaunde hym not to bye them of no man in certayne: and the seruaunt doth accor dyng, & maister shalbe charged, but if the seruaunte in that case bye them in his owne name not speakinge of his maister, the maister shall not be charged onlesse the thynges bought come to his vse.

¶ Also if a man sende his seruaunte to the market wyth a thinge whiche he knoweth to be defectiue to be solde to a certayne man and he selleth it to him: there an accion lyeth agaynst the maister, but if the maister biddeth him not sell it to any parson in certain, but generally to whom he can. And he selleth it accor dyng, there lieth no accion of disceit against the maister.

¶ Also if the seruaunte kepe the maysters fyre negligently wherby hys maisters house is brennt

and

and

## The.xlii.chapter.

and his neighbours also, there an accion lieth against the master. But if the seruaunt beare fire negligently in the strete, and thereby the house of an other is burned, there lieth no accion against the maister.

Also if a man desire to lodge wth one that is no common hosteler, and one that is seruaunt to hym that he lodgeth with: robbeth his chamber, his Maister shall not be charged for that robberyng, but if he had bene a comun hostiler, he should haue bene charged.

Also if a manne be gardein of a prison wherin is a man & is condemned in a certayne summe of money, and an other that is in prison for felonye, and a seruaunt of the gardeine that hath the rule of the Prison vnder him, wilfullpe letteth them bothe escape, in thys case the gardeine shall answer for the det, and shall paie a fine for the escape of the other, as for a negligent escape, and & seruaunt onely shalbe put to answer to the felony for the wilfull escape.

Also if a manne make another his generall receiuour, and that receiuour receiue money of a creditoure of hys Maister, and maketh him acquitaunce and after payeth not his maister yet that paymente dischargeth the creditoure, but if the creditoure had taken an acquitaunce of hym without payng hym his money, that acquitaunce onely were no bar to & maister, onlesse he made him receiuour by writyng, and gaue him auctoritie to make acquitaunces, and than the auctoritie muste be shewed. And if the creditoure in suche case by agremente betwene the receiuour  
and

and hym, deliuer to the recepuoure a horse or an  
other i thing in recompence of the dette, that de-  
liuery dischargeth not the creditour, onlesse it be  
deliuered ouer vnto the maister, and he agrees  
to it. For the receiuoure hath no suche power to  
make no such commutacion, but his maister geue  
him special commaundement therto.

Also if a seruaunt shewe a Creditour of hys  
maister that hys maister sente hym for his mony  
and he payeth it vnto him, that payment dischar-  
geth him not if the maister did not sende him for  
it in dede, except that it come after vnto the vse  
of the maister by his assent.

Also if a man make a baylicfe of a maner and  
after the lord of whom y maner is holden grafi-  
ted the seigniozie to another, and the baylicfe af-  
ter paieth the rente to the graunte, y payment of  
the rent counteruayleth no attournant though  
it were by fine, ne shall not binde his Maister,  
til he atturne him selfe, but if the lord of whom  
y lande is holden diseased of the seigniozie, and  
the baylicfe paieth the rente to the heyre of the  
lord: y is a good season to the heyre though  
the baylicfe had no comaundement of his maister to  
paie it. For it belongeth to his office to pay rets  
seruice but not rent charge as some men saie.

Also an encrochement by the baylicfe shal not  
binde y maister in auowry if he had no comaun-  
dement of the maister to paie it. Also if there be  
A lord, Mesne, and tenant, & the tenant holdeth  
of the Mesne as of his maner of. D. y Mesne  
maketh a baylicfe. And after the tenant maketh  
a scoffement, y scoffe tendeth notice to y baylicfe

## The.xliii.chapter.

and he accepteth his rente w<sup>th</sup> the arrerages, thys notice shal not binde the lorde ne compell him to alter his auowry, for the office of a baylyfe stretcheth not therto but he must haue therin a special commaundement of his maister.

*an after  
the  
a Sunday*  
¶ Also if a seruaunte ride on hys maisters horse to do an errante for hys mayster into a Towne that hath auctorite to make attachementes of goodes vpon plaintes of det. &c. and there vpon a plainte of det made againste the seruaunt, the maysters horse is attached by the officers thynkyng that the horse were his owne, and because the seruaunt appeareth not, & officers seale the horse as forfeite, in thys case & lorde shall haue an accion of trespas againste & officers, and this attachement for the det of his seruaunt shall not binde him. &c. but that an host or a keeper of a tauerne shalbe charged for their gesses onlesse it be done by their assent or commaundement. I doe not remember that I haue reade it in the lawes of Englande.

### ¶ Addicion.

¶ Whether a villayne or a bonde man may geue awaye his goodes.

## The.xliii.chapter.

I T appeareth in the sayd summe called Summa angelica in the title donacio prima the.ix. Paragrafe, that a bonde man nor a religious man, nor a Monke, ne suche other that hath nothyng in proper maye not geue but it be by lycence of their superioure, but that sayinge is not as it is sayd



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saide, there to be vnderstande of Religious parsons & haue lawefull ministracion of goodes, for if they geue wyth a cause reasonable, it is good, but without cause they may not.

¶ Also if they by & licence of the Prelate wyth the counsaile of the moze parte of the couente abide at schole or go on pilgrymage: thei may geue as other honest scholers and pilgrymes be reasonably wont to do, and they may also geue almes where there is great neede, if they haue no tyme to aske licence.

¶ Also if they see one in extreme necessitie they may geue almes though their superiours prohibite them, for than all thynges be in common by & law of God. And therfore they be bounden for to do it, as appeareth in & aforesayd summe called Summa angelica in the title Elemosina, the vi. Paragrafe. Dothe not the lawe of England agree wyth these diuersities. S. For as muche as the question is onelye made whether a villayne or a bonde man maye geue away hys goodes or not. And it semeth that after the foresayd Summe, in the title whyche thou hast before rehearsed, that he ne none other that hath no propertie may not geue, wherby it appeareth that the sayde Summe taketh it & a bonde man should haue no properte in his goods, and & therfore his gift should be voyde. I shall somewhat touche what propertie and what aucthoritye a villayne hath in hys goodes after the law of & Realme, and what auctozitie the Lorde hath ouer them. And I will leue the diuersities that thou hast remembred before of religious par-

S.iii.

sons

## The. xliii. chapter.

lonēs to them that liſte to treate further therein hereafter.

Fiſt if a villayne haue goodes either by his owne proper bynge and ſellynge, or other wyſe by the gift of other men, he hath as perſite a proprietye, and alſo as whole intereſt in them, and may as lawfully geue the away as anye free mā hath may. But if ⁊ lordes ſeaſe them before his gift: then thei be ⁊ lordes, and the intereſt of the villayne therein is determined.

Alſo yf the Lorde ſeaſe parte of the goodes of hys Villayne in the name of all the goodes that the Villayne hathe or ſhall hereafter haue that ſeaſure is good, for all the goodes that he hadde at that time, though they were not there preſent at ⁊ tyme of the ſeaſure. But if goodes come to the Villayne after the ſeaſure he maye lawfully, geue them away notwithstanding the ſaide ſeaſure.

Alſo if the Lorde clayme all the goodes of the villain, and ſeaſeth no part of them, that ſeaſure is voide, and the gift of the villayne is good notwithstanding that ſeaſure.

Alſo if a manne be bounde to a villayne in an Obligacion in a certayne ſumme of money, and the lorde ſeaſeth the obligacion, than the obligacion is his, but yet he can take no accion thereupon but in the name of the villayne, and therefore if the villeine releaſe the det, the lord is barred by that releaſe.

Alſo if a woman be a niſe, and ſhe marieth a free man, ⁊ goodes immediatlye by the mariage be the husbands, and the lord ſhall come to late  
to

to make any leaseure, and if the husbände in that case maketh his wyfe his executrix and dyeth; & the wyfe taketh y same goodes againe as executrix to her husbände, yet it shall not be lawefull for the lord to take them from her, though she be a niece as she was before the mariage.

Also if goodes be geuen to a manne to the vse of a villaine, and the lord sealeth those goodes, y leaseure after some men is good by the statute made in the.xix.yere of kinge Henrye the seuēth whereby it is enacted that the Lorde shall enter into lands wherof other persons be seased to the vse of his villayne and they saie y the same statute shalbe vnderstande by equitie of goodes in vse, as well as of landes in vse.

Also if a villayne be made a prieste, yet neuertheles y Lorde may lease his goodes and landes as he might before. And vntill the seles he maye alien them and geue them away as he might before he was prieste. And in this case the Lorde maye order him, so that he shall do him suche seruice as belongeth to a priest to dooe, before anye other: but he may not put him to no labour nor other busines but that is honest and lawefull for a priest to dooe.

Also yf a bylleyne enter into Religion in hys yere of proufe, he maye dispose hys goodes as he might haue done before he toke the habite vpon him. And in likewyse the Lorde maye lease his goods as he might haue done before, but if he after make executours, & be pssessed. And y executours take the goodes to the perfourmaunce of

## The.xliiii.chapter.

the wyll. than the lordē may not seise the goodes though the executours haue them to the p̄formance of the wil of hym that is his villayne, nor in that case the lordē may not sease his bodye ne put hym to no maner of labour, but muste suffer hym to abide in hys religion vnder ꝑ obedience of his superiour as other religious parsons doe that be no bondmen. And the lordē hath no remedye in that case for losse of hys bondman but onely to take an accion of trespassse agaynst hym that receiued hym into religion without hys licence, and therupon to recouer damages as shal be assessed by .xii. men. Many other cases ther be concernynge the gyfte of the goodes of a villeyne wherfore I wyll speake no more at thys tyme, for thys that I haue sayde suffiseth to shew that the knoweledge of the kynges lawe is ryght expediente to the good order of conscience concernynge suche goodes.

**I**f a clarke be promoted to the title of hys patrimonie and after selleth his patrimonie and after falleth to pouertie whether shall he haue his title therein or not.

## The.xliiii.Chapter.

**I**n the sayd summe called Roscella in the tytyle Clericus quartus, the .xxiiii. article it is asked if a Clarke be promoted to the tytyle of hys patrimony, whether he may aliene it at hys pleasure, and whether in that alienacion the solempnitie neadeth to be kepte ꝑ is to be kept in alienacion

nation of thynges of the churche, and it is aun-  
 dwered there that it maye not be aliened no more  
 than the goodes of a spirituall benefyce if it be  
 accepted for a title, and expressely assigned vnto  
 hym, so that it should go as into a thyng of the  
 churche, except he haue after an other benefyce  
 wherof he may lyue. But if it be secretely assig-  
 ned to his title, some agree it may be aliened, and  
 in this case by the lawes of the Realme it maye  
 be lawefullye aliened whether it be secretelye or  
 openlye assigned to hys title, for the ordinarie  
 ne yet y party him self after the olde customes of  
 the realme haue no auctoritie to bynde any in-  
 heritaunce by auctoritie of the spirituall lawe,  
 and therfore the lande after it is assigned and ac-  
 cepted to be hys title, standeth in the same selfe  
 case to be bought, solde, charged, or put in execu-  
 tion as it did before. And therfore it is somewhat  
 to be marueyled y ordinaries wyll admit suche  
 lande for a title, to the intent that he that is pro-  
 moted should not fall to extreme pouertie, or go  
 openly a beggyng, wythout knowynge how the  
 comon lawe wyll serue therein, for of mere ryght  
 all inheritaunce wythin thys Realme oughte to  
 be ordered by the kynges lawes, & inheritaunce  
 can not be bounden in thys realme but by fyne,  
 or some other matter of record, or by feoffment,  
 or suche other, or at least by a bargayne y chaun-  
 geth an vse. And ouer that to assygne a state for  
 fearme of lyfe to hym that hathe a fee simple be-  
 fore is voyde in the lawes of Englande, wyth-  
 out it be by such a matter that it worke by waye  
 of conclusion or estoppel, and in thys case is no  
 suche



The.xliiii.chapter.

suche maner of conclusion, and therfore all that is done in such case in assignyng of  $\S$  sayd title is voyde. Also there is no interest that a man hath in anye maner landes or tenementes for tearme of life, for terme of yeares or otherwise, but that he by the lawe of  $\S$  realme maye put awaye hys right therein if he will. And then when this man alieneth hys lande generailye, it were agaynste the lawe of the Reale  $\S$  anye iustice of suche a tittle shoulde remayne in hym against his owne sale, and there is no diuersitye whether  $\S$  assignement of the title were open or secrete, and so the tittle is voyde to all intentes. And in like wyse if a house of religion or any other spiritual manne  $\S$  hath graunted a title after the custome vsed in suche titles sell all  $\S$  landes and goodes that they haue that sale in the lawes of Englande is good as against that tittle, and the bier shall neuer be put to answer to  $\S$  tittle. Also some saye that vpon the common titles that be made daylye in such case that if he fall to pouertye  $\S$  hath the tittle, he is wythout remedye, for they be so made  $\S$  at the common Lawe there is no remedye for them, and if he take a suite in the spirituall court many men say that a prohibition or a premunire lieth. And therfore it were good for ordinarie in such case to counsaile  $\S$  them that be learned in the lawe of the realme to haue such a forme deuised for makinge of suche titles, that yf neede bee woulde serue them  $\S$  they bee made vnto, or els let them be promoted wythout anye tittle, and to truste in God that if they serue him as they ought to do he wil prouide for them to

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to haue sufficient for them to liue vpon. And beside these cases & I haue remembred before there be manie other cases put in the sayd summes for the well ordering of conscience, that as me thinketh are not to be obserued in thys realme neither in lawe nor in conscience.

D. Doest thou then thinke & there was default in them & drew the said summes and put therein such cases and such solucions & as thou thinkest hurt conscience, rather than to geue any lpyght to it, specially as in this realme.

S. I thynke no default in them, but I thynke & they were ryght well and charitable occupied to take so greate paine and labour as they did therein for the wealth of & people and clearing of their conscience, for they haue therby geuen a right greate light in conscience to all countreys, where the lawe Ciuile and the lawe Cannon be vled to tempoꝝ all thinges. But as for & lawes of this realme they knew them not ne they were not bounde to know them, and if they had known them it would little haue helpen for & countreies that they moste specially made their treaties for, and in this countrey also they be ryght necessarye and muche profitable to all menne for such doubtess as rise in conscience in diuers other maners not concernynge the lawe of the realme. And I marueyle greatly that non of them that in this Realme are moste bounden to dooe that in them is to keepe the people in a righte iudgemente, and in a clarenesse of Conscience: haue doone no more in tyme paste to haue the Lawe of the Realme knowen, than they haue doone  
for

## The.xliiii.chapter.

for though ignorance may sometime excuse yet the knowledge of the truth, and the true iudgement is much better, & sometime thoughe ignorance excuseth in part, it excuseth not in all, and therfore me thinketh they did verpe well if they woulde yet be callers on to haue that poynte reformed as shortly as they coulde. And now because thou haste well satisfied my mynde in many of these questions that I haue made: I purpose for this tyme to make an ende. D. I praye thee yet shewe me oz & thou make an ende woe of the cases that after thine opinion be set in diuers bookes for clearynge of conscience, that as thou thinkest for lacke of knowlege of the lawe of the realme do rather blynde Conscience than geue a light vnto it, for if it be so than surely as thou hast sayd it wold be reformed, for I thinke verely the lawes of the Realme in manye cases muste in this realme be obserued as well in conscience as in the iudicial courtes of the realme. S. I wyl with good wyl shew to thee shortly some other Questions that be made in the sayde summe to geue thee & other occasion to see therein the opinions of the sayde summes, and to see farther therupon howe the opinions and the lawes of the realme dooe agree together. And yet beside these Questions that I intende to shewe vnto thee, there be manye other questions in the sayd summes that had as greate nede to be more plainly declared accordyng to the lawes of the realme as those that I shall shew thee hereafter oz as I haue spoken of before, but to the cases & I shall speake of hereafter I wil shew the no-  
thing

The.xlv.chapter. Fol.143.

thinge of my concepte in them, but wil leue it to other that wil of charitie take some further pain hereafter in that behalfe.

Diuers questions taken out by the Student of the summes called Summa Rosella, and Summa Angelica, whiche he thynketh necessarie to be looked vpon, & to be sene howe they stande and agree with the law of the realme.

The.xlv.chapter.

**T**HE first Question is this, whether a custome may breake a Lawe positync, Summa rosella, titulo cōsuetudo. Paragrase. xiii.

The second is if a manne attaynted or banished be restozed by the prynce, whether shal that restitution streatche to the goodes Summa rosella in the title Dampnatus in principio.

Item if a man be outlawed of felonie, abjured or attainted of murder or felonye, or he that is an ascismus may be slaine by straungers and se like matter therto, Summa angelica, in the title Ascismus. Para. ii.

This question is somewhat answered to in a newe addicion as appeareth before in the.xli. Chapter.

Item whether the maister shalbe bounde by the act or offence of his seruant or officer Summa

## The xlv. chapter.

ma angelica in the title dominus. Para. liii.

This question is answered to in a new addi-  
tion, as appeareth befoze in the. xlii. chapter.

Item whether a villayne may geue away his  
goodes, & Summa angelica, in the title donacio  
prima. Para. ix.

This question is answered to in a newe addi-  
tion, as appereth befoze in the. xliii. chapter.

Item whether an abbot may geue. &c. Summa  
Angelica, in the title donacio. i. Para. x. & xxxix.

Item whether a woman concert maye geue a-  
way any good, and it is answered, Summa an-  
gelica, in the title donacio. i. Paragrafe. xi. & she  
may not wout she haue goods beside her dowry,  
but onely in almes.

Item if a man do treason whether his gyft of  
goodes after befoze attendre be good, Summa  
angelica, in the title donacio. i. Para. xii. and it  
semeth there nay, and loke Summa angelica, in  
the title alienacio. Para. xxiii.

Item if a manne wittinglye make a contract  
betwene two kinssfolke, or other that maye not  
lawfully mary together, whether he hath forfeit  
his goodes, Summa angelica, in the title donacio  
i. Paragrafe. xiiii.

Item whether the father may geue to the sone  
Summa angelica, in the title donacio. i. Para.  
xix. and Summa rosella, in the title donacio. ii.  
Paragrafe. xlii.

Item whether a man may geue aboue. v. c. s.  
abluque insinuacione Summa angelica, in the title  
donacio prima. Paragrafe. xx.

Item whether a gifte shall be auoyded by an  
m-



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Ingratitude, Summa rosella, in the title donacio i. Paragrafe.xvii. & .xxix, and there it is said that the gifte is voide by the lawe of nature, and loke Summa Angelica, in the title donacio prima. Para.xlii.and.xlv.

Item whether any gyft betwene the husband and the wife may be good, and it is said yea whe the husbände geueth it, causa remuneracionis, Summa rosella, in the title donacio. i. Paragrafe.xxii.

Item if a man make a wyl and enter into religion whether he may after reuoke the wyl and it is sayd that fryers minours maye not, and o-ther maye, Summa rosella, in the title donacio prima. Paragrafe.xxxv.in fine.

Item if a man geue another a towne wyth all the rightes that he hath in the same whether the patronage. &c. and the tithes passe. Summa rosella, in the title ecclesia.i. Para.lvi.

Item whether al that is bought with the money of the church be the churches. Summa rosella, in the title ecclesia.i. Para.vii.

Item if a gifte made to a monasterye maye be auoided by that the geuer hath children after the gifte, Summa Angelica, in the title donacio.i. Paragrafe.xlii.

Item if a manne bye a thyng vnder the halfe price, whether he be bounde by the Lawe to restore. &c. Summa rosella, in the title empcio and vendicio. Para.vi.

Item whether a common thiefe vel comunis de populatoz agrozum may abiure, Summa rosella, in the title emunitas.ii.in principio. Et ha-  
be

## The. xlv. chapter.

bet ibi in fine quod licet leges excipiat plures personas tum p ius canonicum legibus derogatum est.

Item whether a man shall take the church for great enormous offences that is not murther nor felony. Summa Rosella, in the title Emunitas. ii. Paragrafe. iii. and. xi.

Item if a man take one in the highe waye and draw him out and there beteth hym, whether he shall haue punishment & is ordeined for them & strike one in the high waye. Summa Rosella, in the title emunitas. ii. Paragrafe. vi.

Item whether he & taketh the church may after for & offence be iudged to death. Summa Rosella, in the title Emunitas. ii. Paragrafe. viii.

Item whether the Bishops palceys be sanctuary, Summa Rosella, in the title Emunitas. ii. Paragrafe. xiiii.

Item whether the dignitie of the Bishop or priesthode discharged bondage, Summa Rosella in the title episcopus in principio.

Item whether a clarke is bounde to paye any impositions or tallages for hys patrimony or otherwise, Summa Rosella, in the title excommunicacio. i. diuisione octaua. Para. iiii. and. v. and vi. and diuisione nona. Paragrafe. i.

Item if it were ordeyned by statute that if a man sell. &c. he shall geue to the kynge. ii. d. whether a clarke be bound to geue it if he sell of hys prebende, Summa Rosella. in the title excommunicacion. i. diuisione nona. Para. iii.

Item if it be ordeyned by statute that there shall not be layed vpon a deade parson but suche a certayne clothe, or thus manye tapers or candles

bels, whether & statute be good & it is lefte for a  
questiō. Summa rosella in & title excommunicatio  
i. diuisione. xviii. Para. viii. in fine.

Item if a man make a lease of a mill for terme  
of yerres & it is agreed & the lesse shal grind & les-  
sour tolle free durpng & terme after & lessoure is  
made an Erle or a Duke & hath greter household  
than hiefore, wheth er & lesse be bound therto. &c.  
Summa rosella in the title familia. Para. v.

Item yf a master wyll not pay his seruantes  
wages that hath serued hym faithfully whether  
& the seruaint may take secretly as much godds  
of & masters &c. and if he do whether he be boūd  
to restitution. Summa rosella in the tytle familia  
Para. vi.

Item thinges immouable of & church may not  
be geuen. Summa rosella in & title of feodū. Pa-  
ragraf. i. & see ther in principio what feodum is.

Item whether the sonnes bastardes and the  
sonnes lawefully begotten shal inherit together  
Summa rosella in the title filius, Para. i.

Item whether father and mother may succede  
to their bastardes. Summa rosella in the title fi-  
lius. Paragraf. iiii.

Item whether the father may leaue any of his  
goodes to his bastarde. Summa rosella in the ti-  
tle filius. Paragraf. v. and Summa rosella in &  
title societas. Para. xiii.

Item whether the offence of the father shall  
hurt the sonne in temporal thynges. Summa ro-  
sella in the title filius. Para. x.

Item yf a manne geue all his landes and  
goodes to his childzen, whether a bastarde shal  
haue

## the, xlv. Chapter.

haue any part. Summa rosella in the tytle filius  
¶ Paragraf. xxi.

Item to whom treasure found belongeth, Summa rosella in the title furtum. ¶ Pa. xi.

Item if a Dere or other wild beast & is so sore hurt & he maye bee taken cometh into an other mans ground, whether it be his & oweth & ground or his that strake him. Summa rosella in the title furtum. ¶ Pa. xiii.

Item whether theft be in a litle thing as wel as in a great thinge, Summa rosella in the title furtum. ¶ Pa. xviii.

Item what pain a thefe shal haue. Summa rosella in the title furtum. ¶ Pa. xxii.

Item the goodes of dead men go to the heires and that of damned men. s. De terris. Summa rosella in the title hereditas. ¶ Pa. i.

Item whether a man shall bee sayde gyltpe of murther by commaundement counsaile or assent Summa rosella in the title homicidium. ii. per totum, and like matter is homicidium. iii. in principio and diuers other cases.

Item a man maketh a priuy contracte wyth a woman and after hath a chyld by her: and after maryed another woman and hath a chyld, she not knowing of the first contracte which of the chyldren shalbe his heire. Summa rosella in the title Illegitimus. ¶ Pa. iii.

Item whether the Pope may legitimate one to tempozal thinges and to succede. Summa rosella in the title Illegitimus. ¶ Pa. xxv.

Item if goodes be founde that wer left of the owner as forlaken who hath right to them, Summa  
ma

the. xlvi. Chapter. Fo. 146

ma rosella in & title inuēta. Para, ii. And loke su  
ma rosella in & title furtū. Pa, xvii. And thus I  
make an end of these questōs, & because thou de  
siredst me in & .xxxi. chap. to shew the somewhat  
wher ignorance excuseth in & law of the realme &  
wher not, I wil answer somewhat to thy questio  
and so commit the to god.

¶ Where ignorance of the lawe  
excuseth in the lawes of Eng-  
lande and where not.

¶ The. xlvi. Chapter.

I Ignorāce of & law though it be inuicible doth  
not excuse as to & law but in few cases, for e-  
uery mā is bound at his peril to take knoweledge  
what & law of & realme is, aswell the lawe made  
by statute as & cōmō law, but ignorāce of & dede  
which may be called & ignorāce of & truth of the  
dede may excuse in many cases. ¶ I put case & a  
stat penal be made & it is enacted & the stat shall  
be pclaimed before such a day in euery shire, & it  
is not pclaimed before & day, & after & day a mā  
offēdeith against & statute shal he ren in & penal-  
ty. ¶ I think ye, if ther be no farther wordes in  
& statute to help him, & is to say, & if the pclama-  
cion be not made & no man shalbe bounde by the  
statute, & & cause is this, ther is no statute made ī  
this realme but by the assēt of the lordes spiritual  
& tēporal & of all the cōmons, & is to saye by the  
knights of & shire citezens & Burgesis that bec  
hosen by assent of the commons, which in & par-  
lyament represent the estate of the hole cōmōs.

¶ C.ii.

And



## the. xlii. Chapter.

And euery statute there made is of as stronge effect in  $\forall$  lawe, as if all  $\forall$  commons were there presente parsonally at  $\forall$  making therof, and like as there neded no proclamacion if all were there present in their owne parsons, so  $\forall$  lawe presumeth, there nedeth no proclamacion whan it is made by their auctoritie, and than whan it is enacted  $\forall$  it shall bee proclaimed &c.  $\forall$  is but of the fauour of the makers of  $\forall$  statute and not of necessitie, and it cannot therefore bee taken  $\forall$  their intende was  $\forall$  it shoulde bee voyde yf it wer not proclaymed. Neuerthelesse some bee of oppinion  $\forall$  if a manne before the daye appoynted for the proclaymacion offende  $\forall$  statute,  $\forall$  he should not in  $\forall$  case bee punished, for they saye  $\forall$  the intende of  $\forall$  makers of  $\forall$  statute shall bee taken to bee  $\forall$  none shoulde bee punished before  $\forall$  day, which is a doubt to some other, but admyt bee as they saye  $\forall$  he shall bee excused, yet he is not excused by  $\forall$  ygnoraunce of  $\forall$  lawe, but because  $\forall$  intent of  $\forall$  makers excused hym. **D.** It is enacted in  $\forall$ . vii. yeaere of Kyng Rycharde  $\forall$  seconde  $\forall$ . vi. Chapter  $\forall$  euerye Shirife shall proclayme  $\forall$  statute of Winchester thre tymes euery yeaere in euery market towne to  $\forall$  intende  $\forall$  offenders shall not bee excused by ignoraunce, & it semeth by those woordes  $\forall$  yf no proclamacion be made  $\forall$  the offendour may be excused by ygnorance. **S.** Some take the entente of  $\forall$  statute to bee that the people by  $\forall$  proclamacion shoulde haue knowledge of that statute of Wynchester to the intende  $\forall$  the forsaiture therein maye bee taken as well in conspience as in lawe, and some take the

the statute to be of such effect as thou speakest of that is to saye, that no forfeiture shoulde growe vpon the statute of Winchester agaynst them & were ignoraunt but proclamacion wer made accordyng to & sayde statute of Richarde. And yf it be so taken & statute of Winchester is of small effect agaynst moste part of & people, for certayn it is & the sayde proclamacion is not made, but admit it be as they saye, than they & be ignoraunte be excused by the said particuler estatute specially made in & case and not by the generall rules of the lawe, and sometyme in dyuers statutes penalles they & bee ygnoraunte bee excused by & selfe statute as it is vpon & statute of Richarde the. ii. the. xiii. yere, the seconde statute and the laste Chapter where it is enacted & yf any parson take a benefyce by prouision & he shal bee banished the realme and forfeit all his goodes, and that if he be in the realme, he auoyde within. vi. weekes after he hath accepted it, and that none shall receyue hym & is so banished after the saide vi. weekes vpon lyke forfeiture, if he haue knowledge, and so he that hath no knowledge is excused by the expresse wordes of the statute. And in lyke wyse he that offendeth agaynst Magna carta is not excommuniced but he haue knowlage & it is prohibite & he dothe. For they be onely excommuniced by the sentence called (*Sententia lata super cartas*) & dothe it wilfullye or that doth it by ignoraunce, and correct not themselves within. x. dayes after they haue warning. And sometyme they & bee ygnoraunte of a statute be excused fro & penaltie of the statute because it shalbe

## the. xlii. Chapter.

taken that the intente of the makers of y<sup>e</sup> statute was y<sup>e</sup> none shall bee bounde but they that haue knowledge, but y<sup>e</sup> any manne shold be discharged in y<sup>e</sup> lawe by ignoraunce of the lawe onelye for y<sup>e</sup> he is ignoraunt. I knowe fewe causes excepte it might bee applyed to infantess y<sup>e</sup> bee in cheir infancye and within yerres of discreciō, for if ygnoraunce of y<sup>e</sup> lawe should excuse in y<sup>e</sup> lawe, many offenders would pretende ygnoraunce. **W**shal an infaunt y<sup>e</sup> hath discrecion and knoweth good fro euill be punished by a penall statute y<sup>e</sup> he is ignoraunt in. **S.** If y<sup>e</sup> statute bee y<sup>e</sup> for y<sup>e</sup> offence he should haue corporall payn I thinke he shall bee excused and haue no corporal payne but I suppose y<sup>e</sup> that is not for y<sup>e</sup> ignoraunce for though he knewe y<sup>e</sup> statute and wittingly offended, yet I thinke he shall haue no corporal payn as where he pleaded ioyntenauncy by dede that is founde against hym, or if he pleade a record in assise and faileth of it at his day, but y<sup>e</sup> is because y<sup>e</sup> lawe presumeth y<sup>e</sup> it was not y<sup>e</sup> intente of the makers of y<sup>e</sup> statute y<sup>e</sup> he should haue y<sup>e</sup> punishment but yf he bee of yeres of discrecion to knowe good fro euill whether he shall than forfeit y<sup>e</sup> penaltie of a penal statute it is more dout, for it is comonly holden y<sup>e</sup> if an infant hadde not been excepted in y<sup>e</sup> statute of foriudgement y<sup>e</sup> the foriudgement should haue bound him, & so shal his cesser and his leuyng of a crosse againste the statute or if he bee a gardein of prisone & suffer a prisoner escape he shal pay y<sup>e</sup> det because y<sup>e</sup> statutes be general & if he shold by tho statutes bee bound xiiij age like reaso wil y<sup>e</sup> he may by a statute  
penall

penal lese his goodes. D. If an infant do a mur-  
ther or a felony at suche yeares as he hath discre-  
cion to knowe & lawe, shall he not haue & punish-  
mente of the lawe as one of full age. S. I  
thinke yes, but that is by an oide maxyme of the  
lawe for eschewing of murthers and felonyes,  
& so it is of a trespass, but these cases仁ne not  
bypon & grounde of ygnoraunce, but with what  
act infants, shall be punishable or not punishable,  
for the tenderneffe of theyr age, though they bee  
not ignoraunte. D. We not yet knightes and  
noble menne that are bounde most properly to  
set their study to actes of chivaltrie for defence of  
& realme. And husbände men & muste vse tyllage  
& husbandry for & susteynaunce of & commonal-  
tye, and & maye not by reason of their labour put  
themselues to knowe & lawe, discharged by igno-  
raunce of & lawe. S. No verelye, for syth al  
were makers of & statute, the lawe presumeth  
that all haue knoweledge of & that they make as  
it is sayde before, and as they be bounde at their  
peryll to take knoweledge of the statute & they  
make: so bee all them that come after them. And  
as for knightes and other nobles of & realme me-  
semeth & they should be bounde to take knowe-  
ledge of & lawe as wel as any other in & realme  
except them & geue themself to & study & exercise  
of & lawe, and except spirituall iudges & in many  
cases be bounde to take knoweledge of the lawe  
of & realme as is said before in & .xcv. Chap. For  
though thei be bound to actes of chivalry for de-  
fence of & realme, yet they bee bounden also to &  
actes of iustice, and that as it semeth more than  
other

## the. xlii. Chapter.

other be by reson of their gret possessions & au-  
tority, And for þ̄ wel ordning of þ̄ tenants ser-  
uantes & neighbours, þ̄ manytimes haue nede of  
their help, & also because they be oft called to bee  
of þ̄ kinges counsel, & to þ̄ general counsailes of  
þ̄ realm, where their counsaile is right expedient  
& necessary for þ̄ common welth, & therefore if þ̄  
noble mē of this realm would see theyr chyldren  
brought vp in such maner þ̄ they should haue ler-  
ning & knowlage more than they haue commonly  
vsed to haue in time past, specially of þ̄ groundes  
& principles of þ̄ law of þ̄ realm wherein they be  
inherit though they had not þ̄ high cūning of þ̄  
hole body of þ̄ law, but after such maner as mai-  
ster Fortescue in his boke þ̄ he ētitled þ̄ boke (de  
laudibus legū anglie) auertileth þ̄ prince to haue  
knowlage of þ̄ lawes of his realm, I suppose it  
would be a great help hereafter to þ̄ ministraciō  
of iustice in this realm. A great surety for thēself  
& a right great gladnes to al þ̄ people for certain  
it is þ̄ more part of þ̄ people would more gladly  
here þ̄ their rulers & gouernours entēded to or-  
der thē wīsdō & iustice than wī power & great  
retinues. But ignorance of þ̄ dede manye tymes  
excuseth in þ̄ lawes of Englād. And I shal short-  
ly touche some cases therof to shew where it shal  
excuse & wher it shall not excuse, & than þ̄ reader  
may adde to it after his pleasure and as he shal  
thinke to be conuenient.

**C**ertain cases and groundes where igno-  
rance of the dede excuseth in þ̄ lawes  
of Englande, and where not.

**T**he



**I**f a manne by a horse in open market of him  
 in right hath no propartye in him not know-  
 yng but he hath righte he hath good tytle and  
 righte to the horse and the ignoraunce shall ex-  
 cuse him. But yf he had bought him out of an o-  
 pen market, or if he had knowen the seller had  
 no right, the bying in open market hadde not excu-  
 sed hym. Also if a manne retaine another mannes  
 seruaunt not knowing he is retained by hym,  
 the ignoraunce excuse hym bothe for the offence  
 was at the common lawe agaynst the maxyme the  
 prohibited suche retaynyng of another mannes  
 seruaunt. And also agaynst the statute of xxxiii. of  
 Edward the thirde, whereby it is prohibit vpon  
 paine of emprisonmente the none shall retayne no  
 seruaunt that departeth within his terme with-  
 out licence or reasonable cause, for it hath bene  
 alway taken the intent of the makers of the sayde  
 statute was that they that were ygnoraunt of the  
 first retaynour should not ren in any penaltie of  
 the statute. And the same lawe is of hym that re-  
 tayneth one the is warde to another, not knowe-  
 yng he is his warde. And if homage be due and  
 the tenaunte after the homage is due makerh  
 a feoffemente, and after the lord not knowyng of  
 the feoffement dysstrayneth for the homage in that  
 case the ignoraunce shal excuse hym of damages in  
 a Repleuin though he cannot auow for the homage  
 but if he had knowen of the feoffement he shoulde  
 haue yelded damages for the wrongfull takyng.  
 Also if a man be bounde in an obligacion that he  
 shal

## the. xlvii. Chapter.

shall reparaire the houses of hym that he is bounde to by suche a certayne tyme as oft as nede shal require, & after & houses haue nede to be repayred but he that is bounde knoweth it not, that ygnorance shall not excuse him for he hath bound himself to it, and so he must take knowiage at his peril, but if & condicion hadde bene & he should reparaire such houses as he to whom he was bound should assigne, and after he assigneth certain houses to be repayred, but he that is bounde hath no knoweledge of that assignement, & ygnorance shall excuse hym in & law, for he hath not bound himself to no reparacions in certain, but to such as the party will assigne and yf he none assigne he is bounde to none, & therfore syth he & should make the assignement is priuie to the dede he is bound to geue notice of hys owne assignement, but if & assignement hadde bene appointed to a straunger than the obligoure muste haue taken knoweledge of & assignement at his peril. Also if a man bye landes wherunto another hath tittle whiche & hier knoweth not, that ygnorance excuseth hym not in the law no more than it doth of goodes. Also if a seruaunt come with his masters horse to a towne & by custome may attache goodes for det, and vppon a plaint against & seruaunte, an officer of & towne by informacion of the party attacheth the masters horse thinking that it were the seruautes horse, & ygnorance excuseth him not, for whan a manne will dooe an acte as to enter into lande, seale goodes, take a distresse or suche other, he muste by the lawe at hys peril see that that he dothe be lawefully done

done as in that case before rehersed. And in like wise if a sherif by a repleuin deliuer other beasts than were distrayned, though he & party that distrayned shewed him they wer the same beasts, yet an accion of trespass lieth against him, & ignorance shal not excuse him, for he shalbe compelled by & lawe as all officers commonly be to execute the kinges writ at his peryll accordyng to & honour of it, and to see that the act that he doth be lawfully done. But otherwise it is after som maner if vpon a somons in a precipe quod reddat the sherif by informacion of the demaundaunt somoneth the tenaunt in another mans land thinking it for the tenautes land there they say he shalbe excused, for in that case he dothe not seale & lande ne take possession in the lande, but only doth somon & tenant vpon & lande, and the writ comaundeth him not that he shall somon & tenant vpon his owne lande but generally that he shall somon hym, and nameth not in what lande and than by an olde maxime in & lawe it is taken that he shall somon him vpon the lande in demaunde, & therefore though he mistake & lande and be ignorant of it, yet if the demaundaunt enfourme him that that is the lande that he demaundeth & suffiseth to the sherife as to his enter for the somoning as they say, though it be not the tenants. And here I make an ende of these questions for this time. D. I pray the yet or we depart take a litle more payne at my desyre.

S. What is that. D. That thou wouldest shewe methy minde in diuers cases of & law of the realme, which as me semeth stand not so cleerly wryth

## the. xlviii. Chapter.

with conscience as they should do. And therefore  
I would gladly here thy conceit therein how they  
may stande with conscience. S. But y<sup>e</sup> cases  
and I shall with good wyll saye as I thinke to  
them.

### ¶ Addicion.

¶ The fyrste duestion of Doctoure. Howe  
the law of Englād may be said reasona-  
ble that prohibiteth them y<sup>e</sup> be arre-  
ned vpon an enditement of felo-  
nye or murther to haue  
counsayle.

### ¶ The. xlviii. Chapter.

M<sup>e</sup>thiketh y<sup>e</sup> the law in y<sup>e</sup> point is very good  
& indifferent taking y<sup>e</sup> lawe thetein as it is.  
D. Why what is y<sup>e</sup> law in this point. S. The  
law is as thou sayst y<sup>e</sup> he shall haue no counsayle  
but than y<sup>e</sup> law is farther, y<sup>e</sup> in all thinges y<sup>e</sup> par-  
tain to y<sup>e</sup> order of pleadyng y<sup>e</sup> iudges shall so in-  
structe him and so order him y<sup>e</sup> he shall renne in-  
to no ieopardy by his mispleadyng, as yf he wyll  
pleade y<sup>e</sup> he neuer knewe the man that was slain  
or y<sup>e</sup> he neuer hadde a peny woorth of the goodes  
that is supposed that he shoulde stele, in these ca-  
ses y<sup>e</sup> iudges are bounde in conscience to eforme  
him that he muste take y<sup>e</sup> generall yssue & pleade  
that he is not guilty, for though they be set to bee  
indifferent betwene y<sup>e</sup> king and the partye as to  
the partye as to the principall matter as they bee  
in

in all other matters, yet they bee set in this case to see & the partye take no hurte in fourme of pleadinge in suche matters as he shall shewe to be & trueth of & matter, ond & is a great fauoure of & lawe for in appelle thoughte & Iustices of fauor will moste commonlye helpe foorth the partye and sometyne his counsaile also in the fourme of pleadynge as they doe also many times in commonplees, yet they mighte in the cases yf they woulde bydde & partye and his counsaile pleade at their peryll. But they maye not doe so with conscience bypon enditeementes as me seemeth, for it were a great vntreasonableness in the lawe yf it shoulde prohibyte him & standeth in ieopardye of his lyfe & he shoulde haue no counsaile, and than to dzyue hym to pleade after the strayte rules and formalities of the lawe & he knoweth not. D. But what yf he bee knowne for a common offender, oz & the iudges knowe by examinacion oz by an euident presumption & he is guiltye and he asketh Sentwary, oz pleadeth misnoliner oz hath some recorde to pleade & he cannot pleade after & fourme. May not & Iudges in suche cases bydde hym pleade at his perill. S. I suppose & they maye not, for thoughte he bee a common offender oz & he be guiltye, yet he ought to haue & the lawe geueth him, and & is & he shall haue & effect of his plees & of his matters entred after & fourme of & lawe, & also sūtime a man by examinaciō & by witnes maye appere guiltye & is not. And in likewise ther may be a vehemēt suspiciō & he is guiltye & & yet he is not guiltye, & therefore for such suspiciōs oz. vehemēt presūpciōs me thinketh



## the. xlviii. Chapter.

thinketh a mā may not ~~be~~ cōsciēce be put fro ~~he~~ he ought to haue by ~~the~~ law: ne yet although ~~the~~ iudges knew it of their own knowlege. But if it wer in appele I suppose ~~the~~ the iudges myght do there in as they should thinke best to be done in cōsciēce, for there is no lawe that byndeth them to instruct him but as thei doe commonly the parties of fauour in all other cases but they maye if they wil byd them pleade at theyr perill by aduise of their counsaill, and yf the appele be poore & haue no counsaill, the court must assigne him counsel if he aske it as they must do in all other places, & that me thynketh they are bounde to do in conscience though ~~the~~ appele wer neuer so gret an offender, and thoughte the Judges knew neuer so certainly ~~the~~ he were guilty, for the lawe bindeth the to do it. And so me thinketh ~~the~~ there is great diuersitie betwene an indict and an appele. And the reason why the lawe prohibiteth not counsel in appele as it doth in an enditement I suppose is this. There is no appeale brought but that of common presumption the appellaunt hath great malice against the appele. As whan the appele is brought by the wife of the death of her husband or by the sonne of the death of his father, or that an appele of robberye is brought for stealyng of goods. And therfore if the iudges should in those cases shew themself to instruct the appeles, the appellauntes would grutche and thinke the perciall, and therefore as well for the indemnity of the court as of the appele in case that he be not guilty the law suffreth the appele to haue counsel but whan that a man is indicted at the kynges suite

*Handwritten note:*  
y. y. g. 2201  
f. 10. v. 10. 10. 10.

suite the Kyng intendeth nothing but iustice &  
 fauor & that is to the rest & quietnes of his faith-  
 ful subiectes, & to pul away mildoers amōg the  
 charitably, & therfore he wil be cōtented that his  
 iustices shal help forth the offēders accordyng to  
 the trowth as far as reason & iustice may suffer.  
 And as the king wil be contented therein: it is to  
 p̄sume & his counsel wil be contented. And so  
 there is no daunger therby neither to the courte-  
 ne to the party, & as I suppose for this reason it  
 began that they should haue no counsayle vpon  
 inditementes & that hath so long continued that  
 it is nowe growen into a custome & into a ma-  
 xime of the law that they shali none haue. D.  
 But if the iudges know of their own knowlege  
 that the inditer is guilty, & than he pleadeth mys-  
 nosmer or a recorde that he was auterfoites ar-  
 rayned & acquite of thesame murther or felony,  
 & the iudges of their own knowlege know that  
 the plee is vntreue: maye they not thā bidde hym  
 plead at his peril. S. I think yes, but yf they  
 know of their own knowlege that he wer guiltye  
 of the murther or felonye, but that the plee was  
 vntreue they knewe not but by coniecture or in-  
 formacion I think they might not then bid him  
 pleade at his perill.

¶ The second question of the Doctor whe-  
 ther warrantie of the yonger brother &  
 is taken as heire because it is not  
 knowen but that the eldest bro-  
 ther is dead, be in cōsciēce a  
 bar vnto & elder brother  
 as it is in the lawe.

the.xlix.Chapter.

¶ The.xlix.Chapiter.

**A** Manne leased of landes in fee hath yssue two  
sonnes the eldest sonne goeth beyond y Sea,  
and because a common voyce is that he is dead,  
the younger brother is taken for heyre, y father  
dyeth the younger brother entreth as heyre and  
alpeneth the lande with a warrantye, and dyeth  
without any heire of his bodye, and after y elder  
brother commeth agayne and claymeth y lande  
as heire to his father, whether shall he be barred  
by that warrantye in consyence as he is in the  
lawe.

**S.** It is a maxime in the lawe that the eldest  
brother shal in that case be barred. And that ma-  
xime is taken to be of as stronge effecte in y law  
as if it were ordained by statute to be a barre.  
And it is as olde a lawe y suche a warrantye shal  
barre the heyre as it is that the inherytaunce of  
the father shall onely descende to y eldest sonne.  
And sithe y lawe so is why shoulde not than co-  
nsyence folowe y lawe as well as it dothe in y  
poynte y the eldest sonne shall haue the lande.

**D.** For there appeareth no reasonable cause  
whereuppon y maxime might haue a lawfull be-  
ginning, for what reason is it that the warren-  
tye of an auncester that hathe no ryght to lande  
that shoulde barre hym that hath ryght. And if it  
were ordayned by statute y one manne shoulde  
haue another mannes lande and no cause is ex-  
pressed why he shoulde haue it, in y case though  
he myght holde the lande by force of y statute,  
yet he could not hold it in consyence wout there  
were

were a cause why he should haue it and these cases be not lyke as me semeth to the forfeiture of goodes by an outlawrye, for I wyll agree for thys tyme that that forfeiture standeth wyth conscience because it is ordeyned for ministracion of iustice, but I cannot perceyue any suche cause here: & therfore me thinketh & thys case is like to & maxime & was at the common lawe of wreche of the sea, that is to saye & if a mans goodes had ben wreched vpon the sea that the goodes should haue ben immediately forfayted to the kinge. And it is holden by al doctours that, that law is agaynst conscience except certain cases that were to longe to rehearse now. And it was ordeined by the statute at westminster, the first & if a Dogge or Catte come aliue to the land that the owner if he proue & goodes within a yere & a day to be his shall haue them whereby the sayde lawe of wreches of the sea is made more sufferable than it was before & some thinketh in this case that thys warrantie is no barre in conscience though it be a barre in the lawe. S. I pray the kepe & case of wreche of the sea in thy remembraunce and put it hereafter as one of thy questions & therupon shew me thy further mynde therein, and I shal with good wyl shew the my mynde, & as to thys case that we be in now me thinketh the maxime wherby the warranty shalbe a barre is good an resonable for it semeth not against reason that a man shalbe bounde as to temporall thinges by the acte of hys auncestre to whome he is heyre for like as by the lawe it is ordeyned that he

U. i. shall

## The.xlix.Chapter

shall haue aduantage by the same auncestre,  
 and haue all his landes by dissente yf he haue a  
 ny ryghte, so it semeth & it is not vnrasonable  
 thoughe the law for the priuie of bloude & is  
 betwene them suffer hym to haue a disaduau-  
 tage by the same auncester, but if the Maxyme  
 were that if anye of his auncesters thoughe he  
 were not heyre to hym made suche a warrantp,  
 that it shoulde be a barre, I thynke that maxime  
 were againste conscience, for in that case there  
 were no grounde nor cōsideracion to proue how  
 & said maxime shoulde haue a lawfull beginning  
 wherefore it were to be taken as a Maxime a-  
 gainste & lawe of reason, but me thynketh it is  
 otherwise in thys case, for the reason & I haue  
 made before. D. If the father bynde him and  
 hys heyres to the paymente of a det and dye, in  
 that case he shall not be bounde to paye  
 the det. And so he haue asses by discent from his  
father. And so I woulde agree & if thys man  
 haue asses by discent from & auncester that made  
 the warrantp: & he shoulde haue bē barred, but  
 els me thynketh it shoulde stande hardely with  
 conscience that it shoulde be a barre. S. In  
 case of the obligacion & lawe is as thou sayest  
 and the cause is for & the Maxyme of the lawe  
 in that case is none other but & he shall be char-  
 ged if he haue asses by discent, but if the maxyme  
 hadde bene generall that the heyre shoulde bee  
 bounden in that case wythout any asses, or if it  
 were ordeyned by statute & it shoulde be so, I  
 thynke that bothe the Maxyme and the statute  
 shoulde well stande wyth conscience. And lyke  
 law



lawe, is where a manne is vouched as heyre, he maye enter as he that hath nothyng by discent but where he claymeth the Lande in hys owne ryght, there the warrantye of hys auncester shal be a barre to hym though he haue no asses fro the same auncester, and though it be sayd in Ezechiel the.xviii.chapter. That the sonne shall not beare the wyckednesse of the father, that is vnderstand spiritually. But as to tēporal goods the opinion of doctours is, that the sonne sometyme may beare the offence of hys father. D. Howe that I haue hearde thy minde in this case, I will take aduiseiment there in tyll a better leasure. And will now procede to another question. S. I pray thee do as thou sayst and I shal with good wil make answer thereto as well as I can.

The thirde question of the doctours is a man procure a collaterall warrantye, to extingue a right that he knoweth another man hath to land, whether it be a barre in cōscience as it is in the law or not.

The.1.Chapter.

A manne is disseised of certayne lande, the disseisour selleth the Lande. &c. the aliene knowynge of the disseison obtayneth a release wpyth a warrantye of an auncester collaterall to the disseisour, that knoweth also the ryght of the disseisour. The auncester collaterall dyeth after whose deathe the warrauntye discenteth vppon the disseisour, whether may the aliene in that case houlde the lande in consequence

Q.ii.

enue

## The. I. Chapter

ence as he may by the law. **S.** Sith the warrantye is discended vpon him wherby he is barred in the law me thinketh y he shall also be barred in conscience, and that this case is like to y case in the next chapter before, wherein I haue sayd that as me thinketh it is a barre in conscience.

**D.** Though it might be taken for a barre in conscience in that case, yet me thinketh in this case it cannot, for in the case the yonger brother entred as heyre knowing none other but y he was heyre of right, & after whan he solde y land the byer knew not but that he that solde it had good right to sell it, and so he was ignorant of the title of the eldest brother and that ignorance came by the defeaute and absence of hymselfe that was the eldest brother. But in this case as well the byer as he that made the collaterall warrantye, knew the right of the disceasy and dyd that they could to extinct that ryght, and so they dyd as they would not shoulde haue be done to them, and so it semeth y he that hath y land may not with conscience kepe it.

**S.** Though it be as thou sayst y all they offended in opteyning of the sayd collaterall warrantye, yet such offence is not to be considered in y law but it be in very special cases, for if such allowance should be accepted in the law, releisles & other writings should be of small effect, and vppon euery light surmise all writings might come in triall whether they were made wyth conscience or not. Therefore to auoide y inconuenience the law wyll drue the partie to answer onely whether it be hys dede or not, and not

not whether the dede were made w<sup>th</sup> conscie-  
ence oz against conscience, and though y<sup>e</sup> partye  
may be at a mischief therby, yet the law wil ra-  
ther suffer y<sup>e</sup> mischief than y<sup>e</sup> sayd inconueniēce.  
And like law is if a woman couerte for dreadd of  
her husband by compulsion of him leuy a fine,  
yet the woman after her husbandes death shall  
not be admitted to shew y<sup>e</sup> mater in auoiding of  
y<sup>e</sup> fine for th<sup>e</sup>inconuenience y<sup>e</sup> might folow ther-  
upon. And after the oppinion of many mē there  
is no remedy in these cases in the Chauncerye  
for they say y<sup>e</sup> where the comon law in cases cō-  
cerning enheritance putteth y<sup>e</sup> party fro any a-  
uerment for eschewing of an inconuenience  
y<sup>e</sup> myght folow of it among the people, y<sup>e</sup> yf the  
same inconuenience should folow in the Chaū-  
cerye if the same matter might be pleaded there  
y<sup>e</sup> no sub pena should lye in such cases, & so it is  
in the cases befoze reherfed. For asmuch veraci-  
on, delay, costes, and expenses myght growe to  
the party if he should be put to answer to such  
auermentes in the chauncery as if he were put  
to answer to them at the common lawe and  
therfoze they thinke y<sup>e</sup> no sub pena lieth in the  
sayd cases ne in other like vnto them. Neuer-  
theles I doe not take it that theyre opinion is  
that he y<sup>e</sup> bought the land in this case may with  
good conscience holde the land because he shall  
not be compelled by no law to restore it, but y<sup>e</sup>  
he is in conscience and by the lawe of reasonē  
bounde to restore it oz otherwysē to recom-  
pence the party so as he shalbe contented, and  
I suppose verelye it is so if he wyll kepe hys  
U.iii. soule

soule out of peryll and daunger. And after some men to these cases may be resembled the case of a fyne wyth non clayme that is remembred before in the.xiii. Chapiter of thys booke, where a man knowynge another to haue ryght to certayne lande causeth a fine to be leuied therof & proclamacion and the other suffereth fine peres to passe without clayme in & case he hath no remedy neither by common lawe, nor by sub pena, and & yet he that leuied the fine, is bounde to restore the lande in conscience. And me thinketh I coulde ryght well agree & it shoulde be so in thys case, and & specialllye, because the party him selfe knoweth persitelye & the sayde collateral warrantyc was obtained by couyn and agaynst conscience.

**C** The fourth question of the Doctour  
is of wrecke of the Sea.

The.li. Chapiter.

**I** Pray thee let me now heare thy minde howe the lawe of Englande concernynge goodes that be wrecked vpon the sea maye stande wyth conscience, for I am in great doubt of it. **S.** I pray thee let me firste heare thine opinion what thou thinkest therein. **D.** The statute of westminster the first that speaketh of wrecke is, that if any man, dogge or catte, come aline to & lande out of the ship or barge, that it shall not be iudged for wrecke. so that if the partye to whome & goodes belonge come wythin a pere and a day and proue them to be hys & he shall haue them or els that they shal remayne to the kynge. And me thinketh that the sayde statute standeth nor  
with

with conscience, for there is no lawefull cause why the partye ought to forfeit his goodes ne the kyng or lordes ought to haue the, for there is no cause of forfeiture in the party, but rather a cause of sorow and heavyness. And so y law semeth to adde sorowe vpon sorowe. And therefore doctours holde commonlye y he that hath such goodes is bounde to restitution and y no custome may helpe for they say it is agaynst the commaundment of God. Leui. xix. where it is commaunded y a manne should loue his neighbours as him selfe, and that they say he doth not that taketh awaye hys neighbours goodes, but they agree y if any manne haue cost and labour for the sauynge of such goodes wrecked specially for such goodes as would perishe if they laye skil in the water as sugar, Paper, Salt, Beele, and suche other, that he ought to be allowed for his cosles and labour, but he muste restore the goodes excepte he coulde not saue them wythout puttyng his life in ieopardye for them, and tha if he put his lyfe in such ieopardy and y owner by comon presumption had had no way to haue saued them, than it is most commonlye holden y he may kepe the goodes in conscience, but of other goodes y woulde not so lyghtlye perishe, but that the owner might of common presumption saue them hym selfe, or y myght be saued wythout anye peryll of lyfe, the takers of them be bounde to restitution to the owner, whether he come wythin the yere or after the yere.

And mee thynketh thys case is somewhat lyke to a case y I shall put, if there were a lawe



## The. li chapter,

and a custome in thys Realme oz if it were ordeined by statute & if any alien came throughe the Realme in pilgrimage and died, that all his goodes should be forfet, & law shold be agaynst conscience for there is no cause reasonable why the sayd goodes should be forfet. And no more me thinketh there is of wrecke. **S.** There be diuers cases where a man shal lese hys goodes & no defeaute in hym, as where beastes stray away fro a man and they be taken vp and proclaymed and the owner hath not heard of them within the yere and the day, thoughe he made sufficient diligence to haue heard of them, yet & goodes be forfet and no default in him, and so it is where a man killeth another with the sword of **T.** at stile the sword shalbe forfet as a deodand, & yet no defeaute is in & owner, and so me thinketh it may be in thys case, and that syth & common law before the said statute was that & goodes wrecked vppon the sea shalbe forfet to the kynge that they be also forfet now after the statute except they be saued by folowing & statute, for the law must nedes reduce the propriety of al goodes to some man and whan & goodes be wrecked it semeth the property is in no man but admyt that the propriety remayne styll in the owner, than if the owner percase would neuer clayme, than it shoulde not be kuowen who ought to take them: and so myght they be destroyed and no profyte come of them, wherfore me thynketh it reasonable that & law shall appoint who ought to haue them, and that hath & law appointed to the king as souerayne & head  
ouer

ouer the people. D. In the cases that thou hast put befoze of the stray and droband there be consideracions why they be forfeyt, but it is not so here, and me thinketh that in thys case it were not vnreasonable that y<sup>e</sup> lawe should suffer any man y<sup>e</sup> would take the to take and kepe them to the vse of the owner, sauing his reasonable expenses, and thys me thynketh were more reasonable law than to pull the propertie out of the owner without cause. But if a man in the sea cast hys goodes out of the ship as forsaken: there doctours holde y<sup>e</sup> euery man maye take them lawfully y<sup>e</sup> wyl, but otherwys it is as they saye if he throwe the out for fere y<sup>e</sup> they should ouercharge the ship.

S. There is no suche law in thys Realme of goodes forsaken, for though a man weyue the posseltyon of hys goodes and sayth he forsaketh them, yet by the law of the realme the property remaineth styll in hym, and he may lease them after whan he wyl, and if any man in the meane tyme put the goodes in sauegarde to the vse of the owner. I thynke he dothe lawfully and that he shalbe allowed for hys reasonable expenses in that behalfe as he shall be of goodes founde, but he shall haue no propertie in them no more than in goodes founde. And I would agree y<sup>e</sup> if a man prescribe that if he fynde anye goodes within hys maner that he should haue them as hys owne: that that prescription were voyde, for there is no consideracion how y<sup>e</sup> prescription might haue a lawfull beginning, but in this case me thinketh there is D. What is y<sup>e</sup>?

S.

## 'The. lii. chapter.

**S.** It is this. The kynge by the olde custome of þe realme, as lord of the narrow sea, is bound as it is sayd to scoure þe sea of pirates and petit robbers of the sea. And so it is reade of the noble kynge saynte Edgare, that he woulde twyse in the yere scoure þe sea of suche pyzates, but I meane not therby þe king is bound to cōduct hys marchantes vpon the sea agaynste all outwarde encmyes, but that he is bounde onely to put awaye such Pyzates and petite robbers. And because þe can not be done wythout greate charge, it is not vnreasonable if he haue suche goodes as be wrecked vpon the sea towarde þe charge. **D.** Upon that reason I wyll take a respite tiil an other time.

**The. v. question of the Doctoure whether it stande with conscience to prohibite a Jury of meate and drynkestyll they be agreed.**

### The. lii. Chapter.

**I**f one of the. xii. men of an enquest know the very trouh of his owne knowledge, and instructeth hys felowes therof, and they wil in no wise geue credēce to him, and therupon because meate and drynke is prohibite them, he is driue to the poynt that either he must assent to them, and geue the verdyte agaynste his owne knowledge, and agaynste his owne conscience, or dye for lacke of meate, howe maye þe law than stand wyth conscience that will dzpue an innocent to þe extremitye, to be either forsworne or to be famished and dye for lacke of meat. **S.** I take not the lawe of the realme to be þe Jurye after they be

besworne maye not cate nor drynke tyll they be  
 agreed of the verдите: but trouth it is there is a  
 Maxyme, and an olde custome in the Lawe, &  
 they shall not Eate nor drynke after they bee  
 sworne tyll they haue geuen their verдите with-  
 out the assente and licence of the Iustice, and  
 is ordeyned by & lawe for elchuyng of diuers  
 inconueniences & myght folowe therupon, and  
 that specially if they shoulde cate or drynke at  
 costes of the parties, and therfore if they do the  
 contrary, it maye be layed in arest of the iudge-  
 ment, but wyth the assente of the Iustices, they  
 may bothe cate and drynke, as if any of the Ju-  
 rours fal sicke before they be agreed of their ver-  
 dite: so for that he may not common of the ver-  
 dit, than by & assent of the iustices he maye haue  
 meate and drynke and also suche other thynges  
 as be necessary for hym and hys felowes also at  
 their owne costes, or at the indifferente costes  
 of the parties if they so agree, or by the assente  
 of the iustices may both eat and drinke & there-  
 fore if the case happen & thou nowe speakest of  
 and that the Jury can in no wise agree in their  
 verдите, and & appeareth to the Iustices by ex-  
 aminacion: the Iustices maye in that case suffer  
 them haue bothe meate and drynke for a tyme  
 to se whether they wyll agree, & if they wyll in  
 no wyse agree: I thinke & than iustices may set  
 such order in & matter as shal seme to the bi their  
 discrecion to stande & reaso & conscience by a war-  
 dig of a new enquest & by setting fines vpon the  
 & they shal finde in default or otherwyse: as they  
 shall thinke beste by theyr discrecion lyke

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 of Jury

## The. liii. chapter.

as they may do if one of the iury die before ver-  
dit or if any other like casualties fall in his behalf.  
But what he iustices ought to do in this case he  
thou hast put by their discrecyon: I will not  
treate of at this tyme.

**C** The. vi. question of the Doctour whether he  
colours be giuen at the comon law in as-  
sises, accions of trespass, and diuers o-  
ther accions stande wyth conscience  
because they be most commonly  
seynd and be not true.

### The. liii. Chapter.

I pray the let me here thy mynde to what in-  
tent such colours be giuen, and sith they be  
commonly vnttrue: how they may stande wyth  
conscience. **S.** The cause why such colours  
be giuen is this, there is a maxime & a ground  
of the law of Englande, that if the defendant or  
tenant in any accion plede a plee he amounteth  
to the general issue that he shal be compelled to  
take the generall issue, and if he wyl not, he shal  
be condemned for lacke of answer, and the ge-  
nerall issue in assise is, that he that is named the  
disseasour hath done no wrong nor no diseaso:  
And in a writte of entre in the nature of assise  
the generall issue is that he diseased hym not, &  
in an accion of trespass that he is not gilty and  
so euery accion hath his generall issue assigned  
by the law, & the tenant must of necessity either  
take that generall issue, or plede some plee in a-  
batement of his writ, to the iurisdiction, to his per-  
son or els some barre or some matter by way of  
conclusion. And therefore John at stile intesse  
Henry



Henry Hart of land and a stranger byngeth an assise against the said Henry Hart for that land whose title he knoweth not. In thys case if he should be compelled to plede to the point of the assise, that is to say, that he hath done no wrong ne no disseason the matter should be put in the mouthes of. xii. lay men which be not learned in the lawe, and therfore better it is that the lawe be so ordered that it be put in the determination of the iudges than of lay men. And if the sayd Henry Hart in the case before rehearsed would plede in barre of the assise that John at style was seased and infeffed hym, by force wher of he entred and asked iugement if that assise should lie against him, that plee were not good for it amounteth but to the generall issue and therfore he shalbe cōpelled to take the generall issue or els if assise shalbe awarded against hym for lacke of answer. And therfore to the intent the matter may be shewed and pleed before the iudges rather than before the Jury, the tenātes vse to gyue the pleyntife a colour, that is to say a colour of accion wherby it shall appere that it were hurtfull to the tenant to put that matter if he pleadeth to the iugement of. xii. men, and the molte common colour that is vsed in suche case is thys, whā he hath pleded that such a mā infeffed hym as before appereth it is vsed that he shall plede ferther and say that the pleyntyfo clayming by a colour of a dede of fessmēt made by the sayd feoffour before the feoffment made to hym, where nought passed by the dede entred vpon whom he entred and asked iugement if  
the

## the. liii. chapter

the assise lie agaynst him. In thys case because it appereth to be a doubt to vnlearned men whe ther the lande passe by the dede wythout liuercy or not, therfore the lawe suffreth the ternaunt to haue that speciall matter to bypnye & matter to the determination of the Judges. And in suche case the Judges may not put & ternaunt fro the plee, for they knewe not as Judges but that it is true, and so if any default be, it is in & tenante and not in the court. And though the trowth be that there were no suche dede of feoffmence made to the plaintyfe as the ternaunt pleadeth, yet me thinketh there is no default in the tenat for he dothe it to a good intent as before appeareth. **D.** If the ternaunt know & the feoffoure made no such dede of feoffment to the playnetyfe, than there is a defaulte in the ternaunte to plede it, for he wittingly sayth agaynst & trowth and it is holden by all doctours that euerye tye is an offence more or lesse, for yf it be of malyce, and to the hurt of his neighbour, than it is called (*Mendacium perniciosum*) and y is deadlye synne. And if it be in sporte and to the hurte of no manne, nor of custome vsed, ne of pleasure & he hath in lypnge, than it is veniall synne, and is called in latine, *medacium iocosum*. And if it be to the profite of his neyghbour and to the hurte of no man, thā it is also veniall synne, and is called in latine *medacium officiosum*. And though it be the lest of those thre, yet it is a venial synne and wouide be eschued. **S.** Though the midwibes of Egypte lyed whan they had reserued the male chyldren of the Ebrewes sayng to the kyng

kyng Pharao, & the Hebrewes hadde women  
that were cunnyng in the same crafter, whiche  
or they came hadde reserued the chyldren alpye,  
where in dede they the selues of pity and of dyed  
of god reserued them, yet saint Hierome expou-  
neth the texte folowynge which sayeth that our  
Lorde therfore gaue them houses, that is to be  
vnderstande & he gaue them spirituall houses,  
and & they hadde therfore eternall rewarde, and  
if they sinned by that lye althoughe it were but  
veniall, yet I can not se howe they should haue  
therfore eternall rewarde. And also if a man in-  
tendynge to slea another, aske me where that  
man is, is it not better for me to lye and to saye  
I can not tell where he is thoughe I knowe it,  
then to shewe where he is, wherupon murder  
shoulde folowe? D. The dede that the mid-  
wives of Egypt did in sauynge & chyldren was  
meritorious and deserued rewarde euerlastynge  
(if they beleued in god) & did good dedes beside,  
as it is to suppose they did, whan they for the  
loue of God, refused the death of the innocents  
and than thoughe they made a lye after whyche  
was but veniall sinne, that coulde not take fro  
them their rewarde, for a veniall synne dooeth  
not vtterly extinguishe charitie but letteth the fer-  
uour therof, & therfore it maye well stande with  
the wordes of sainte Hierome, that they had for  
their good dede eternall houses, and yet the lye  
that they made to be a veniall sinne, but neuer-  
theless if such a lye & is of it selfe, but venial be  
affirmed & an othe, it is alway mortal if he knew  
it be false & he sweareth, And as to the other  
question

## the liii. chapter

question it is not lyke to thys question that we haue in hande as me semeth, for somtime a man for eschewyng of the greater euill may dooe a lesse euill, and than y lesse is no offence in him & so it is in the case that thou hast put wherein because it is lesse offence to say he wotteth not where he is though he know where he is than it is to shewe where he is, whercupon murther should folow, it is therefore no sinne to saye he wotteth not where he is, for euery man is bound to loue hys neyghbour and if he shewe in thys case where he is knowing hys death should folow therupon it semeth that he loued hym not ne that he dyd not to hym as he would be done to, but in the case that we be in here, there is no such synne eschewed for though the party pleadeth the generall issue the Jury might fynde y trouthe in euery thing, and therefore in that he saith that the pleyntife clayming in by the colour of a dede of feffement where nought passed entred &c. knowing that there was no such feffement it was a lye in hym and a venial syn as me thinketh. And euery man is bounden to suffre a deadly sinne in his neyghbour, rather than a veniall sinne in himselfe.

**S.** Though the Jury vpon the general issue maye finde the trouthe as thou sayest, yet it is much more daungerous to y Jury to enquire of many poites thā to equere only of one point. And forasmuch as our lord hath gyuen a commaundemēt to euery mā vpon hys neyghbour; therfore euery mā is bound to force as much as in him is y by him no occasiō of offence cōe to his neygh-

neighbour. And for the same cause, the lawe hath ordeined diuers Maximes and principles, wherby issues in the kynges court may be ioyned vpo one point in certain as nigh as may be, & not generally, least offence might folow therupon against god, & a hurt also vnto  $\varphi$  Jury, wherfore it semeth that he loueth not hys neyghboure as him selfe, ne  $\varphi$  he dothe not as he woulde be done to,  $\varphi$  offreth such daunger to his neighbour, wher he may well and conueniently kepe it fro hym, if he wil folow the order of the lawe, and it semeth  $\varphi$  he putteth himself wilfully in iopardy  $\varphi$  doth it and it is written. Ecclesiastici. iiii. Qui amat periculum, in illo peribit, that is to saye, he that loueth peryll, shall peryshe in it, and he  $\varphi$  putteth his neighbour in peril to offende putteth himself in the same, and so shoulde he do me semeth that would wilfully take the general issue, where he might conueniently haue the special matter, and furthermoze it is none offence in princes and rulers to suffer contractes and byng and selling in markets, sayres, though both periury and disceit wyl folow therupon, because such contractes be necessary for the comon wealth, so it semeth likewise, that there is no default in the party  $\varphi$  pledeth such a special matter to auoid fro his neyghboure  $\varphi$  daunger of periurye, ne yet in the courte though they induce him to it, as thei do somtime for the intende befoze rehearsed, and in lyke wyse some wyl saye that if rulers of cityes and communalities somtime for  $\varphi$  punishment of felons murtherers, and such other offenders wyl to the intende they would haue them to confesse  $\varphi$  truth



## The. liiii. chapter.

say to them that be suspected that thei be infor-  
med in such certayn defaultes or misdemeanors  
in the offendours and þ they do to the intent to  
haue them to confesse the truth, that though thei  
were not so informed that yet it is no offence  
to say they were so informed because they do it  
for þ cōmon wealth, for if offendours were suffe-  
red to go unpunished, the cōmon wealth would  
sone decay and vtterly perishe.

D. I wyl take aduiseunte vpon the reason  
in this matter till another season, & I will now  
aske thee another question somewhat lyke vnto  
this, I pray thee let me heare thy mynde therein.

S. Let me heare thy question and I shall with  
good will saye as I thinke therein.

### Addicion.

The. vii. question of the Doctoure concer-  
neth the pleadyng in assise, wherby the  
tenantes vse sometyme to pleade in  
such maner þ they shal cōfesse  
no ouster.

## The. liiii. Chapter.

I T is commonly vsed as I haue heerde saie þ  
whan the tenant in assise pleadeth þ a strann-  
ger was seased and infeoffed him, and geueth the  
plaintyfe a colour in such maner as befoze appe-  
reth in the. xlviij. Chapter, that the tenant many  
times when he hath pleaded thus, and the plain-  
tife clayming by a colour of a dede of feoffment  
made

made by þe sayd straunger, where nought passed by the dede entred, and that than they vse to saie further vpon whom. A. B. entred vpon whome the tenaunt entred, where in dede þe sayde. A. B. neuer entred, ne happly there was neuer no such man. How ca this pleading be excused of an vntruth, & what reasonable cause can be why suche a pleading shou'd be suffred against þe trowth.

S. The cause why that maner of pleadyng is suffred is this. If þe tenant by his pleadyng confessed an immediate entry vpon the plaintife, or an immediate puttyng out of þe plaintife, whiche in french is called an ouster, than if þe title were after found for þe plaintife: þe tenant by his confession were atteynted of þe disseason. And because it may be þe though the plaintife haue good title to þe land, þe yet þe tenant is no disseasor. Therfore the tenants vie manye times to pleade in such maner as thou hast said before to saue themselfe from confessyng of an ouster, and so if there be any default, it is not in þe courte ne in the lawe, for they knowe not the trowth therin tyll it be tryed, and me thinketh also that there is in this case ryght litle default or none in þe tenant: nor in his counsell, specially if the counsaile knowe that the tenaunt is no disseasour. But as to þe point I pray thee þe thou as thou hast taken a respite to be aduised or þe thou shew thy full minde in þe question of a colour geuen in assise wherof mencion is made in the sayd. xlviij. Chapter, þe I in likewise may haue a like respite in this case til other time to be aduised, and than I shall with good wyll shew thee my full mynde therin.

## The. liiii. chapter.

D. I am content it be as thou sayst, but I pray thee & I may yet adde another question to the. ii. questions befoze rehearsed of the colours in assise and fele thy mynde therin, because that sowneth muche to the same effecte & the other do (that is to saye) to proue & there be diuers thynges suffered in the lawe to be pleaded & be agaynste the trowth, & I pray thee let me hercafter know thy minde in all thre questions, and thou shalt than wyth a good wyll knowe mine. S. I pray thee shewe me the case that thou speakest of.

D. If a manne steale an horse secretelye in the nyght. It is vled & therupon he shalbe indited at the kynges suite, and it is vled & in that inditement it shalbe supposed & he suche a day and place with force and armes, that is to saye, wyth staues, swordes, and kniues. &c. felonously steale the horse agaynst the kynges peace, and & forme must be kept in euery inditement, though & felon had neither sworde nor other weapon with hym but & he came secretelye wythout weapon. How can it therfore be excused, but that therin is an vntrouthe. S. It is not alleadged in the

Inditement by matter in dede & he hadde suche weapon, for the fourme of an inditement is thys Inquiratur pro domino Rege, si A. tali die & Anno apud talem locum vi & armis videlicet gladiis. &c. talem equam talis hominis felonice cepit. &c. And than & twelue men be onely charged wyth & effecte of the byll. That is to saye, whether he be guilty of & felony or not, & not whether he be guilty vnder suche maner and fourme as the bill specifiesh or not, and so when they say  
(billa vera)

(billa vera) they say true as they take & effecte of the bill to be. And therfore if there were false latine in the byll of inditement, and & Jury sayeth, (billa vera) yet theyr verdict is true, for their verdict stretcheth not to the trowth or falsshed of & latine, but to the felonye, ne to the fourme of the wordes, but to the effect of the matter, and & is to inquire whether there were any suche felonye done by & parson or not, and though the byll vary from the day, fro & yere, and also from & place where & felony was done in, so it vary not from the shire that the felony was done in.

And the Jury saith (billa vera) they haue geue a true verdict, for they are bounde by their othe to geue their verdict accordyng to & effect of & byll and not accordyng to & fourme of the byll. And so is he that maketh a vowe bound likewise to & that by & lawe is the effect of his auowe, and not only to & wordes of his auow. And if a mā auow neuer to eate white meat, yet in time of extreme necessitie he may eat white meat, rather than die and not breake his auow, though he affirmed it wpyth an othe, for by the effect of his auowe, extreme necessitie was excepted, though it wer not expressly excepted in & wordes of the auowe, & so likewise though the wordes of the byll be to enquire whether such a man such a day and yere and in such a place did such a felony, yet & effect of the byll is to enquire whether he did the felony within the shyre or no, and therefore & Justices before whom such inditements be take, most commonly enfourme the Jurye & they are bound to regarde & effect of the byll and not the forme.

## The. liiii. chapter.

And therfore there is no vntrouthe in thys case, neyther in hym that made the byll, ne yet in the Jurye as me semeth. D. But if the partye þought the hourse bring an accion of trespasse, and declareth that the defendant toke the hourse with force and armes, where he toke him wout force and armes. Howe may the plaintife there be excused of an vntrouth.

S. And if the plaintife surmitte an vntrouth, what is þ to the court or to þ law, for they must beleue the playntife, tyll that þ he sayth be denied by þ defendant. And yet as thys case is, there is no vntrouth in the plaintifs to saye he toke the hourse with force and armes, though he came neuer so secretely and without weapon, for euerye trespas is in þ lawe done wyth force and armes, so that if he be attaynted and found giltye of the trespas, he is attainted of the force and armes. And sith the lawe adiudgeth euery trespas to be done with force, therfore the plaintife sayth truely þ he toke hym wyth force as the Lawe meaneth to be force. For though he toke þ hourse as a felon, yet vpon that felonous takynge the owner may take an accion of trespas, and if he wyll for euery felony is a trespas and moze. And so I haue shewed thee some part of my mind to proue that in those cases there is no vntrouth neyther in the parties, neither in þ Jury, nor in the law. Neuertheles, at a better leasure I wil shew the my minde moze fullye therin with good wyll as thou halste promised me to do in the cases of the colours of the assise, and of the ouster that be, before rehearsed,

The



## The.xlv.chapter. F.1.164.

**The.viii.question of the Doctoure whe-  
ther the statute of.xlv. of Edward the  
thirde of Silua cedua, stand with  
conscience.**

### The.lv.Chapter.

**I**n the.xlv.pere of the raigne of king Edward the thirde, it was enacted that a prohibition should lye where a man is impleded in the court Christien, for dismes of Woode of the age of. xx. yeare or aboue by the name of silua cedua, howe maye that statute stande wyth conscience & is so directly agaynst the libertie of the church, and & is made of such thinges as the Parliament had no aucthoritie to make any lawe of. **S.** It appeareth in the sayde statute that it is enacted & a prohibition shoulde lye in & case, as it hadde vsed to do befoze that time, and if the prohibition lay by a prescription befoze & statute why is not than the statute goode as a confirmation of that prescription. **D.** If there were suche a prescription befoze & statute that prescription was voyde, for it prohibiteth & payment of tythes of trees of the age of.xx.pere or aboue, and paynge of tythes is groundes as well vpon the lawe of God, as vpon & law of reason, and agaynst those lawes lyeth no prescription as it is holden most commonly by all menne.

**S.** That there was such a prescription befoze & sayd statute, and & if a man befoze & said statute had be sued in & spiritual court for tithes of wood of the age of.xx. pere or aboue & prohibition lay,

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## The.lv.chapter.

appeareth in y<sup>e</sup> sayde statute, and it canne not be thought that a statute y<sup>e</sup> is made by auctorite of the whole realme, as well of y<sup>e</sup> kynge and of the Lordes spirituall and tempozall as of all the commons, wyll recite a thinge agaynste y<sup>e</sup> truth. And furthermore I can not se how it cā be grounded by the law of God, or by the law of reason y<sup>e</sup> the tenth part should be payed for tyth and none other porcion but that, but I thynke that it be grounded vpon the lawe of reason that a manne should geue a reasonable porcion of hys goodes tempozall to them that minister to hym thinges spiritual, for euery man is bound to honour god of his proper substāce, and y<sup>e</sup> geuing of such porcion hath not ben only bled amōg faithfull people, but also amōg vnfaithfull as it appereth Gene. xlvii where corne was geuē to the priestes in Egipte of cōmon barnes. And. S. Paule in his epistles affirmeth the same in many places, as in his first Epistle to y<sup>e</sup> Corinthians, the. ix. chapter where he sayeth he y<sup>e</sup> woorketh in the churche shall eate of that y<sup>e</sup> belongeth to the churche. And in hys Epistle to the Galathes y<sup>e</sup>. vi. Chapter he sayth, hym that is instructed in spirituall thynges departe of hys goodes to hym y<sup>e</sup> instructed hym. And saynte Luke in the. x. Chapter sayeth y<sup>e</sup> the workeman is worthy to haue his hyre all which sayinges may right conueniently be taken & applyed to his purpose y<sup>e</sup> spirituall merue whyche minister to the people spiritual things, ought for their ministracion to haue a competent liuving of them y<sup>e</sup> they minister vnto. But that the. x. part should be assygned for such a porcion & netther

ther more nor lesse. I canne not perceyue & that  
 should be grounded by the lawe of reason, nor im=  
 mediatlye by & lawe of God, for before the lawe  
 wrytten, there was no certayne porcion assigned  
 for the spirituall ministers, neither the .x. parte  
 nor the .xii. parte, vnto the time of Iacob, for it  
 appeareth. Genesis. xxviii. that Iacob auowed  
 to pay dismes whiche was among & Jewes for  
 & .x. parte if our lord prospered him in his iour=  
 ney, and if the .x. part had bene his duty before &  
 auow, it had bene in vaine to haue auowed it, &  
 so it had if it had ben grounded by & lawe of reaso,  
 and as to that & is spoken in the Euangeilistes,  
 and in & newe lawe of tithes, it belongeth rather  
 to the geuyng of tithes in & tyme of & olde lawe  
 than of the newe lawe, as appeareth Mathewe.  
 xxiii. and Luke. xi. where our lord speaketh to &  
 Phariseis, sayng, wo be to you Pharises & tith  
 mintes, rue, and herbes, and forget & iudgement  
 and & charitie of god, these it behoueth you to do  
 and the other not to omit, & is to saye, it beho=  
 ueth you to do iustice and charitie of God, & not  
 to omit payng of tithes though it be of smal thin  
 ges, as of mintes, rue, herbes, and such other.  
 And also that & the Pharisei sayeth. Luke. xvii.  
 I pay my tithes of all & I haue is to be referred  
 to the olde lawe not to & tyme of the newe lawe.  
 Therefore as I take it & the paynge of tythes  
 or of a certayne porcion to spirituall men for their  
 spirituall ministracion to the people, hath bene  
 grounded in diuers maners. Firste before & lawe  
 wrytten a certayne porcion sufficiente for & spi=  
 rituall ministers was due to them by & lawe of  
 na=

## The. l v. chapter.

nature, whiche after them that be learned in the law of  $\gamma$  realme is called the lawe of reason, and that porcion is due by all lawes, and in  $\gamma$  lawe written, the Jewes were bounde to geue the .x. part to their priests as well by  $\gamma$  sayde auowe. of Iacob, as by the lawe of God in  $\gamma$  olde testament called the Iudicialles. And in  $\gamma$  newe lawe the painge of the .x. parte, is by a lawe that is made by  $\gamma$  churche. And the reason wherfore the .x. part was ordeined by  $\gamma$  churche to be payed for the tithe was this. There is no cause why the people of the new lawe ought to pay lesse to the ministers of the new lawe, than the people of the olde testament gaue to the ministers of the olde testament. For the people of  $\gamma$  new lawe be bound to greater thinges then  $\gamma$  people of the old law were, as it appeareth. Math. v. where it is sayde but your good workes abound about  $\gamma$  workes of the Scribes and the phariseis, ye may not enter into  $\gamma$  kingdome of heauen. And the sacrifice of the olde lawe was not so honorable as the sacrifice of the newe lawe is, for  $\gamma$  sacrifice of the olde lawe was onely the figure, and the sacrifice of the newe lawe is the thyng  $\gamma$  is figured, that was the shadow, this is the trouth. And therefore  $\gamma$  church vpon  $\gamma$  reasonable consideration ordeyned that the .x. part should be payde for  $\gamma$  sustenance of  $\gamma$  ministers in the newe lawe, as it was for the sustenance of the ministers in the olde law, and so  $\gamma$  lawe with a cause maye be increased or minished to more porcion or to lesse as shalbe necessarpe for them. **W.** It appeareth Genesis. xiiii. that Abraham gaue to Melchise-

Dech

dech dismes, and  $\frac{1}{2}$  is taken to be the .x. part and  $\frac{1}{2}$  was long before the law written, and therfore it is to suppose  $\frac{1}{2}$  he did that by the law of God. **S.** It appeareth not by anye scripture that he did  $\frac{1}{2}$  by the commaundement of God, ne by any reuelacion. And therfore it is rather to suppose that he did parte of outye, and part of hys owne fre wyll. for in that he gaue the dismes as a reasonable porcion for the sustenance of Melchisedech and his ministers, he did it by commaundement of the lawe of reason as before appeareth, but that he gaue the .x. parte, that was of his fre will, and because he thought it sufficient and reasonable, but if he had thought the .xii. part or the xii. part had suffised, he might haue geuen it and  $\frac{1}{2}$  with good conscience. And so I suppose that in the new lawe,  $\frac{1}{2}$  geuyng of the .x. parte is by a lawe of the churche, and not by the lawe of God, onlesse it be taken that  $\frac{1}{2}$  lawe of the Churche is the lawe of god, as it is somtyme taken to be, but not appropriatlye nor immediatlye, for that is taken appropriatlye to be  $\frac{1}{2}$  lawe of God,  $\frac{1}{2}$  is cōteyned in scripture, that is to say, in the old testamente or in the newe. **D.** It is somewhat daungerous to saye  $\frac{1}{2}$  tithes be grounded onelye vpon the lawe of the churche, for some menne as it is sayde saye that mannes lawe byndeth not in conscience, and so they might happen to take a boldnes therby to deny their tithes. **S.** I trust there be none of that opinion, and if there be it is greate pitye. And neuertheles they maye bee cōpelled in  $\frac{1}{2}$  case by the lawe of  $\frac{1}{2}$  church to pay their tithes as well as they should be if paynge  
of



## The .lv. chapter.

of tithes were grounded merely vpon & lawe of God. D. I thinke well it be as thou saiest and therfore I hold me cōtented therin. But I pray thee shew me thi mind in this question, if a whole countrey prescribe to paye no tithes for corne or hey, nor such other, whether thou thynke & that prescription is good.

S. That question dependeth much vpon that & is sayde before, for yf paynge of the .x. part be by the law of reason or by the lawe of God, than the prescription is voyde, but if it be by the law of manne, than it is a good prescription so & the ministers haue a sufficient porcion beside. D.

John Gerson whiche was a doctoure of diuinitie, in a treatise & he named Regule morales: saith & dismes be paid to priestes by the law of God.

S. The woordes that he speketh there of that mater be these (*Solutio decimarum sacerdotibus est de iure diuino quatenus inde sustententur: sed quoniam hanc vel illam assignare: aut in alios redditus commutare positui iuris existit.*) That is thus much to say, & payng of dismes to priestes is of the lawe of God, & they may therby be susteined but to assigne this porcion or that, or to chaunge it to other rentes, that is by the law positue, and if it should be taken that by that worde, decimarum, which in English is called dismes or tithes that he mente the .x. parte, and & that .x. parte should be payde for tithe by the law of God, thā is the sentence & foloweth after agaynste that saying, for as it appeareth aboue & text sayth afterward thus, but to assigne this porcion or that or to chaunge it into other rentes belongeth to the

the lawe positieue, & is to the lawe of man, and yf  
 & .x. part were assigned by God, than maye not a  
 lesse parte be assigned by the lawe of manne for &  
 should be contrary to & law of God, & so it shold  
 be voide. And me thinketh that it is not likely &  
 so famous a clarke woulde speake anye sentence  
 contrary to the lawe of God, or contrary to & he  
 had spoken befoze, and to proue he ment not by &  
 terme: decime, & dismes shoulde alway be taken  
 for the tenth parte, it appeareth in &.iiii. parte  
 of his workes in the .xxxii. title littere, where he  
 sayth thus. (Non vocat porcio curatis debita  
 propterea, decime: eo quod sepe sit decima pars  
 immo est interdū vicesima aut tricesima.) That  
 is to saye, & porcion due to curates, is not there-  
 fore called dismes, for that is alwaye the .x. parte  
 for sometyme it is the .xx. or the .xxx. parte and so  
 it appeareth that by this wooorde decimarum, he  
 ment in & text befoze rehearsed a certayne porci-  
 on, and not pzeclise the .x. part, and that & por-  
 cion should be payd to pziestes by & law of God,  
 to sustaine them wyth, takynge as it semeth the  
 law of reason in that sayng, for the law of God  
 as it may one way be well and conueniently ta-  
 ken: because & lawe of reason is geuen to euerye  
 resonable creature by god. And than it foloweth  
 pursuantye & it belongeth to the lawe of manne  
 to assigne this porcion or that as necessitie shall  
 require for their susteynaunce, and than his say-  
 inge agreeth well to & that is sayde befoze, that  
 is to saye, & a certayn porcion is due for pziestes  
 for their spirituall ministracion by the lawe of  
 reason. And than it woulde folowe therupon &  
 if

## The. lvi. chapter.

if it were ordeyned for a lawe that all payng of tithes should from henceforth cease and þe curate should haue assigned to him such certain porcion of lande, rent, or annuitie, as should be sufficient for him, & for such ministers as should be necessarye to be vnder him, accordynge to the number of the people there, or that euerye parson shene or housholder should geue a certain of money to þe vse: I suppose the lawe were good, and þe was the meanyng of John Gerson as it seemeth in his wordes before rehearsed, where he saith, but to chaunge tythes into other rentes is by the lawe positif, & is to saie, by the lawe of man. And so me thinketh þe if a whole countrey prescribe to be quite of bothe tythes of corne or grasse, so þe the spirituall ministers haue a sufficient porcion beside to liue xpo. & is a good prescription, & that they should not offend, & in such countries paid no tythes, for it were hard to saie þe al þe men of Italy, or of þe East parties be dampned because they pay no tithes, but a certain porcion after þe custome, therfore certain it is to pay such a certaine porcion as well they as all other be bounde, if the church aske it, any custome notwithstanding, but if the Church aske it not, it seemeth that by þe not askynge the church remitteth it, and an example therof we maye take of þe apostle Paule, that though he might haue taken his necessary liuing of them that he preached to, yet he toke it not, and neuertheless they þe gaue it him not did not offend, because he did not aske it, but yf one man in a towne would prescribe to be discharged of tithes, of corne, & grasse, me thinketh

keth & prescripciō is not good, onles he cā proue  
 & he recōpenseth it in another thing, for it semeth  
 not reasonable & he shold pay lesse for his tithes  
 then his neighbours dooe, seinge & the spirituall  
 ministers are boude to take as much diligēce for  
 him as thei be for any other of & parish, wherfore  
 it myght stand & reason & he should be cōpelled  
 to pay his tithes as his neighbors do, onles he cā  
 proue & he paieth in recōpence therof more than  
 the .x. part i an other thig. ¶ Cuertheles I leaue  
 & matter to the iudgement of other, & than for a  
 further prouise & the sayd prescripciō of not pai-  
 ing tithes for trees of .xx. yere & aboue though it  
 wer not good of corne & grasse shold be good sōe  
 make this reason, they saye & there is no tith but  
 it is either a prediall tith, a personal tith, or a mixt  
 tith, & they say & if a tith should be payd of trees  
 whan they be so sold, & that tithe were not a pre-  
 diall tyth, for the prediall tyth of trees is of such  
 trees as bring forth the fruites and encrease perylly  
 as apple trees, nut trees, peare trees, and such o-  
 ther wherof the prediall tyth is the apples, nuts,  
 pears, & such other fruites as come of the perylly  
 & whan & fruites be tithed: if the owner after fel  
 & trees, there is no tithe due therby, for .ii. tithes  
 may not be payd of one thing, & of these tithes &  
 is to saye, of prediall tithes was & cōmandemēt  
 geuen in & olde lawe to the Jewes, as appereth  
 Leuitici. xxvii. where it is saide (Omnes decime  
 terre: siue de pomis arborū: siue de frugibus, do-  
 mini sunt: & illi sanctificantur) that is to saye, all  
 tithes of the earth, either of apples of trees, or of  
 graines be our lordes, & to him thei be sanctified  
 and

## The .lv. chapter.

& though y<sup>e</sup> sayd law speaketh only of apples, yet it is vnderstand of all maner of frutes. And because it sayeth y<sup>e</sup> all the tithes of the earth be our lordes, therfore calues, lambes, & such other, must also be tithed, & thei be called by some men predial tithes, y<sup>e</sup> is to saie, tithes y<sup>e</sup> come of the ground howbeit they cal them onely predialles mediate, and they be the same tythes y<sup>e</sup> in this wrytyng be called mixt tythes, and the other tithes (that is to say, tithes of apples and corne, and such other be called predials immediate, for they come immediately of the grounde, and so do not mixt tithes as euidently appeareth.

D. But what thynkest thou shalbe the prediall tithes of aslhes, elmes, salowes, alders, & such other trees as beare no frutes, wherof any profit cometh, why shall not the .x. part of the self thing be the tithe therof if they be cut downe as well as it is of corne and grasse.

S. For I thynke that there is to that intende great diuersitie betwene corne, grasse, and trees, and that for diuers consideracions, wherof one is this. The propertie of corne and grasse is not to grow ouer one ycare, and if it do: it wyll perishe and come to nought, & so y<sup>e</sup> cuttyng downe of it, is y<sup>e</sup> perfeccion and preseruacion therof, and the speciall cause that anye encrease foloweth of the same. And therfore the .x. parte of y<sup>e</sup> increase shall be payde as a prediall tithe, and there no deduxcion shalbe made for y<sup>e</sup> charges of it, and so it is of shepe and beastes y<sup>e</sup> must be takē and killed in tyme, for els they maye peryshe and come to naught. But when trees be felled: y<sup>e</sup> fellynge



Is not the perfeccion of the trees, ne it causeth not them to encrease but to decaie, for most commonlye the trees woulde be better if they might grow skill. And therfore vpon that y<sup>e</sup> is the cause of the decaie and destruction of them it seemeth there can no p<sup>r</sup>edpall t<sup>y</sup> the rise, and some mē say y<sup>e</sup> this was the cause why oure Lord in the saide chapiter of Leuitici. xxvii. gaue no commaundemente to tithe the trees, but the fruites of the trees onely. D. / It appereth in Daralapo. xxi. that the Jewes in the tyme of the Kyng Ezechias offered in the temple all thinges that the ground brought forth and that was trees as well as corne and grasse.

S. It appeareth not that they did that by y<sup>e</sup> commaundemente of God and therfore it is like that they did it of their owne deuocion and of a fauoure that they had about their dutye to y<sup>e</sup> repairinge of the temple whiche y<sup>e</sup> kyng Ezechias had then commaunded to be repaired and so that text proueth nothing that tithe should bee payde for trees, and therfore they saye farther that t<sup>r</sup>outh it is that if a manne to y<sup>e</sup> intent he woulde pay no tithe, woulde wilfully suffer his corne & grasse to stand still and to perish, he should offēd conscience therby, but though he suffer his trees to stand stil continually without felling because he thynketh a t<sup>y</sup> the woulde bee asked if he felled them (so y<sup>e</sup> hee dooe it not of an euill will of the curate) he offēdeth not in conscience, ne he is not bounde to restitution therfore as he should be if it were of corne and grasse as before appereth: and another diuersitye is this. In thys case of

## the. lv. Chapter.

tithe woode, & tithe thereof woulde serue so lytle to that purpose that tithes be payde for: that it is not likely that they that made the lawe for paymente of tithes entended & any tythe shoulde bee payde for trees or Woode, for the spirituall minystrers muste of necessitie spende daylye and wekelye, and therefore the tythes of trees or Woode & commeth so seldome woulde serue so lytle to & purpose & it shoulde bee payde for & it woulde not helpe them in theyr necessitie so that yf they shoulde bee drieuen to truste thereto thoughe it myghte helpe hym in whose tyme it shoulde happen to faile, yet it shoulde deceyue them & trussed to it in & meane tyme, and also shoulde leaue & Parishe without anye to mynyster to them. D. I woulde well agree & for trees & beare frute there shoulde no predyall tythe bee payde whan they be solde, for & predyall tythe of them is & frutes & come of them and so there cannot bee two predyales of one thyng as thou haste sayde. But of other trees & beare no frute me thinketh & a predyall tythe shoulde bee payde whan they be solde, and so it appereth & there ought to bee by & constitucion prouyncyall made by & reuerent father i god Robert Wincelise late archbisshopp of Cantorburie wher it is sayde and declared & (silua cedua) is of euery kynde of trees & haue beyng in & that they shoulde be cut or & be hable to be cut, wherof we wyll sayeth he that & possessor of the sayde woodes be compelled by & censures of the Church to paye to the parishe church, or mother Church the tithe as a real or predyall tythe and so by vertue of & constitucio-

stitution prouincial a predial tith must be payde of suche trees as haue no fruite, for I woulde well agree & the said constitucio prouincial stretched not to trees & beare frutes though & woordes be generall for al trees as before appereth.

S. I take not & reason why a predyall tythe shoulde not be payde for trees & beare fruite to be because two prediall tythes canne not be payde for one thyng, for whan & tythe is payde of Lambes yet shall tythe be payde of Wille of & same shepe for it is payde for another increase and so it might be sayde & the frute of a tree is one increase and & fellyng another, but I take & cause to be for & two causes before rehearsed & also forasmuche as & fellyng is not properlye an increase of & trees but a destruccio of & trees as it is sayde before. And farther I woulde here thy mynde vppon & sayde constitucion prouinci all whiche wyll & tythe should be paid for trees by the possessours of the woode that yf the possessor sell the woode for .C.li. and geue & byer a certayne tyme to sell it in, what tythe shall & possessor paye as longe as & woode standeth.

D. I thynke none for & predyall tithe cometh not tyll & woode be felled and a parsonall tythe he cannot pay, no more than if a mā plucke down his house and selleth it, or if he sell all his lande, in whiche cases I agree well he shall pay no tythe neither prediall nor parsonall. S. And than I put case & the byer selleth the woode as gayne as it is standing vppon & ground to another for. CC.li. what tith shall be payde than. D. Than & first byer shall pay tith of & surpluse &

## the. l v. Chapter.

he taketh ouer the. C. li. that he payde as a parsonall tythe. S. And than if the second byer after  $\bar{y}$  cut it down and sell it whā it is cut down for lesse than he payde, what tythe shall than be payde.

D. Than shall he  $\bar{y}$  felletch them paye the tith for the trees as a prediall tith.

S. I cannot see howe  $\bar{y}$  can be for he neyther hath the trees  $\bar{y}$  the predpall tythe shoulde bee payde for if anye oughte to bee payde, nor he is not possessoure of the grounde where the trees growe: and therefore if any prediall tythe should bee payde it shoulde be payde eyther by the first possessour by reason of the worde of the sayd constitution prouinciall whiche be that the tith shal bee paide by  $\bar{y}$  possessoure of  $\bar{y}$  woode, or by the laste bier because he hath  $\bar{y}$  trees  $\bar{y}$  shoulde bee tithed and by  $\bar{y}$  first possessour  $\bar{y}$  tith cannot bee paide as a prediall for he cut not chem downe ne they were not cut downe vpon his bargain, and by  $\bar{y}$  last bier it cannot be paide neither as a prediall tithe for the saide constitution saith  $\bar{y}$  the possessours of the woodes shoulde bee compelled to paie it. And therefore I suppose that  $\bar{y}$  trouth is that in that case no tithe shall bee payde, for as to  $\bar{y}$  last seller he shall pay no parsonall tythe for he gayned nothyng as it appeareth before and no prediall tithe shalbe payde, for it should be against the saide prescription, and also the cutting downe is the destruction of trees and not the preservation as is said before.

D. Than takest thou the saide constitution to be of small effecte as it semeth. S.

I take

I take it to bee of this effecte & of woode aboue  
 twentye yeure it byndeth not because it is con-  
 trarye to & common lawe and to the sayde pre-  
 scription that standeth good in the common law  
 but of Woode vnder. xx. yeare whereof tithe hath  
 been accustomed to bee payde : & constitucion  
 is not againste & saide prescription because pay-  
 ing of tythe vnder. xx. yeare, is not prohibyte but  
 suffered by & saide statute howe bee it some saye  
 & by the verye rigoure of & common lawe tithes  
 shoulde not bee payde for woode vnder. xx. yeare  
 no more than for aboue. xx. yeare and & prohibi-  
 tion in & case lyeth by the common lawe, neuer-  
 thelesse because it hath been suffered to & contra-  
 ry and & in many places tythe hath been payde  
 thereof, I passe it ouer, but where tythe hath  
 not bee payde of woode vnder. xx. yere. I thynke  
 none ought to bee payde at this day in lawe nor  
 conscience: but admit it & the sayde constitucion  
 taketh effecte for paymente of & woode vnder. xx  
 yeare as of a prediall tithe, yet I cannot see how  
 the tythe thereof shoulde bee payde by & posses-  
 soure of the woode if he sell them but & it shoulde  
 bee payde rather by him & hath the trees, for the  
 constitucion is that the tithe shall bee payde as  
 a reall or a prediall tyth, and that is the. x. parte  
 of the same trees as it is of corne, and yf a man  
 bye corne vpon the grounde the byer shall paye  
 the tithe and not the seller and so it shoulde seme  
 to bee here, and what the constitucion mente to  
 decree the contrarie in tithe woode I canne not  
 tell vnllesse the meanyng were to enduce the  
 owners to paye tithes of great trees whan they



## the. l v. Chapter.

fel the to to their owne vse whiche me thynketh  
 shold be very hard to pue to stand & reso though  
 & saide statute hadde neuer bee made as I haue  
 said befoze. And farthermore I woulde here vn-  
 der correccion moue one thyng and that is this  
 that as it semeth they that were at the makynge  
 of the sayde constitucion & knewe the sayd pre-  
 scription did not folowe & dyrecte order of cha-  
 ritye therein so perfectlye as they myght haue  
 done for whan they made the sayde constitucyō  
 prouinciall, directlye agaynste & said prescrip-  
 tion, they set law agaynst custome, and power a-  
 gainst power and in maner & spiritualtye a-  
 gainst & tempozaltye, whereby they myght wel  
 knowe & great variaunce and suite should folow,  
 and therefore if they had clerelye sene & the sayd  
 prescription hadde bene agaynst conscience they  
 should first haue moued & king and his counsell  
 and & nobles of & realme to haue assented to the  
 refozmacion of & prescription and not to make  
 a lawe as it were by auctorite and power a-  
 gainst & prescription and than to thzete & people  
 and make them belcue & they were all accursed  
 & kepte & saide prescription or that mayntain it,  
 and it semeth to stande hardely with consyence,  
 to repozte so many to stande accursed folowynge  
 of & sayde statute and of the sayde prescripcyon  
 as there doe and yet to dooe no more than hath  
 bee done to bying them out of it. W. We thinketh  
 & it is not conuient that laye menne should ar-  
 gue the lawes and the decrees or constytucyons  
 of & churches and therefore it wer better for the  
 to geue credence to spirytuall rulers that haue  
 cure

cure of theyr soules than to truste to their owne opinions, and if they would do so than such matters woulde muche the more rather celsse than they will go by suche reasoninges. **S.** In that that belongeth to the articles of the saythe I thinke the people bee bounde to beleue the churche, for the churche gathered together in the holye ghosste cannot erre in suche thynges as beioꝝg to the Catholike saythe, but where the church maketh any lawes whereby the gooddes or possessions of the people maye be bounde, or by this occasion or that may be taken fro them there the people may lawfully reason whether the lawes byndeth them or not for in suche lawes the churche may erre & be deceiued and deceue other either for singularitie or for couetyse for some other cause, and for that consideracion it pertaineth most to them that bee learned in the lawe of the realme to knowe suche lawes of the churche as treat of the orderynge of landes or gooddes & to see whether they maye stande wyth the lawes of the realme or not and therfore it is necessarye for them to knowe the lawes of the churche that treat of dislines of executours of testametes of legacies bastardie matrimonie and diuers other wherin they be bounde to knowe whan the lawe of the churche muste be folowed & whan the law of the realme, wherof because it is not oure purpose to treat. I leaue to speke any more at this time, & will resorte agayne to speake of tythes, wherin soe me saye of Tin, Cole & Lede, no rith shold be payde whan they be solde by the owner of the ground because it is part of the inheritance

## the. l v. Chapter.

and it is moze rather a destruction of the enheritaunce than an encrease: and thercoze they say  
 ¶ if a manne take a Tyme woozke and geue the  
 Lorde ¶ tenth byshe according to ¶ custome that  
 ¶ Lords shall paye no tythe of ¶ tenth byshe nei-  
 ther pzediall nor parsonall, but yf ¶ other ¶ ta-  
 keth ¶ woozke haue gaynes and aduantage by  
 ¶ woozke it semeth ¶ it were not against reason  
 ¶ he should pay a parsonall tithe of his gaynes ¶  
 charges deduct.

D. I praye thee shewe me firste what thou ta-  
 keth for a parsonal tithe and vpon what grounde  
 parsonall tithes bee payde as thou thinkest so ¶  
 one of vs mistake not another therin.

S. I will with good will and therefore thou  
 shalt vnderstande ¶ as I take it parsonal tithes  
 bee not payde for anye encrease of the grounde,  
 but for suche profite as cometh by ¶ labour or  
 industrie of the parson, as by bying and sel-  
 lyng and suche other, and suche parsonall tythes  
 as I take it, must bee ordered after ¶ custome,  
 and the churche hath not vsed to leupe those ty-  
 thes by compulsion but by conspyence of ¶ par-  
 tyes neuertheless Raymonde saith ¶ it is good  
 to paye parsonall tythes or with ¶ assente of the  
 parson to distribute them to poore merne, or  
 els to paye a certayne porcion for ¶ whole, but  
 as Innocent saith where the custome is ¶ they  
 shoulde bee payde ¶ people bee bounde to pay, the  
 as wel as pzedialles, ¶ expenses deducte, howe-  
 beit in ¶ churche of Englande they vse to sue for  
 suche parsonall tithes as well as for pzedialles  
 and ¶ is by reason of the constitution prouincial  
 that

that was made by Robert Winchelsy late arch-  
 bishoppe of Cauntozburpe by y<sup>e</sup> whiche it was  
 ordayned y<sup>e</sup> parsonall tythes shoulde bee payd of  
 craftes and marchaundysse, and of y<sup>e</sup> lucre of bi-  
 yng and sellpng, and in likewise of carpenters,  
 Smithes, Weuers, Malons, and all other that  
 woorkke for hyre y<sup>e</sup> they shall paye tythes of their  
 hire except they will geue anye thyng certayne  
 to the vse or to the lighte of the Church yf it so  
 please the parson, and in another place y<sup>e</sup> saide  
 archebishoppe sayeth that of the pawnsage of  
 Woodes and suche other thynges. &c. and of fys-  
 shpnges, trees, bees, dooues, and of diuers other  
 thynges there remembred, and of craftes, and of  
 byng and sellpng of y<sup>e</sup> profites of diuers other  
 thynges there recited, euerye manne should hold  
 satisfie competently to y<sup>e</sup> church, to the whiche  
 they bee bounde to geue it of righte, no expen-  
 ces by y<sup>e</sup> geuinge of y<sup>e</sup> sayde tithes deducte or w-  
 holden but onely for y<sup>e</sup> paymente of tithes of craft-  
 es and of byng and sellpng, and by reason of y<sup>e</sup>  
 saide constitucions prouincpales somtime lites  
 bee taken in y<sup>e</sup> spirituall courte for parsonall ti-  
 thes and thereof many menne doe maruayle, be-  
 cause y<sup>e</sup> deduccions manye tymes must bee refer-  
 red to y<sup>e</sup> conscienc of y<sup>e</sup> parties. And they mar-  
 uaile also why a lawe shoulde bee made in thys  
 realme for payng of parsonal tithes moze than  
 there is in other countreis. And here I woulde  
 gladly moue the farther in one thing concerninge  
 suche parsonall tythes to knowe thy mind ther-  
 in and y<sup>e</sup> is, if a manne geue to another a horse,  
 and he selleth y<sup>e</sup> horse for a certayne summe, shal  
 he

## the. l v. Chapter.

he pay any tithe of that summe. D. What thynkest thou therein. S. I thinke that he shal pay no tithe, for there as I take it the profyte cometh not to him by his owne industry but by the gyft of another, and as I take it: parsonal tithes bee not payde for euerye profyte or aduantage that cometh newely to a manne except it come by his owne industry or labour and so it doth not here. And also if he shoulde pay tithe of that he solde the horse for: he shoulde pay tithe for the very whole value of the thyng. And as I take it: the parsonall tithes for byinge and sellynge shall neuer bee payde for the value of the thyng but for the clere gaynes of the thyng, and therefore I take the cases before rehearsed where a manne selleth his land or pulleth down a house & selleth the stufte, that he shoulde there paye no tithe, that it is there to bee vnderstande that he hath that lande or house by gift or by discent, for if a manne bye land, or bye timber and stufte of a house and sell it for a gayne, I suppose that he shoulde paye a parsonall tythe for that gain and this case is not like to a fee or annuitie graunted for counsaile where y whole fee shalbe tithed, for the charges deducte or somme certayne summe for it bee agremente, for there y whole fee cometh for his counsaile whyche is by hys owne industry. But in the other case it is not so, and the same reason as for the parsonall tythe myght be made of trees, whan they descende or bee geuen to any man and he selleth them to another & he shall pay no parsonall tithe. D. He thynketh y if the horse amende in his keepng & than he sell the



the horse, that than the tythe shall bee payde of  
 & that & horse hath encreased in value after the  
 gyfte and so it maye bee of trees that he shall  
 paye tythe of that, & the trees maye bee amen-  
 ded after & gyfte or dyscete, **S.** Than  
 & tythe muste bee & .x. parte of & encrease & ex-  
 pences deducte, and than of trees & charges  
 muste also bee deducte, for it is than a parso-  
 nall tythe, and ther is no tree & is so much worth  
 as it hath hurte & grounde by & growing there-  
 fore there can no parsonall tythe bee payde by &  
 owner of & grounde whan he selleth the thowge  
 they haue encreased in this tyme. Neuerthelesse  
 I wyl speake no farther of & matter at this time  
 but wyl shewe thee & if Tinne, Lede, Cole, or  
 trees be solde & a myxt tythe cannot grow ther-  
 by, for a myxt tithe is properly of Calues, Lam-  
 bes, Pygges, and suche other & come parte of &  
 grounde & they bee fedde of, and parte of & ke-  
 pyngge indurtye and ouersight of & owners as  
 it is sayde before, but Tinne, Lede, and Cole are  
 parte of & grounde and of & freeholde, and trees  
 growe of themselves, and be also annexed to & fre-  
 holde and wil growe of themself and also & myxt  
 tythe muste be payde yercly at certain tymes ap-  
 pointed by & law or by custom of & countrey, but  
 it maye happen & Tinne, Lede, Cole, & Trees,  
 shal not be selled nor taken in many yeres, & so it  
 semeth it cannot be any myxt tithes, and these be  
 some of & reasons whiche they & woulde mayn-  
 tayne & statute and prescription to bee good:  
 make to proue their intent as they thynke. **D.**  
 What thinke they if a manne sell & loppes of hys  
 wood whether any tith ought there to be payde.

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**S.** They thinke all one lawe of y trees and of the loppes.

**D.** And if he vse to fell y loppes once in xii. or. xvi. yeaere, what holde they than. **S.** That all is one. **D.** And what is theyr reaso why tith ought not to bee payde there as well as for woode vnder. xx. yere. **S.** For they saye y

y loppes are to bee taken of y same condicion as y trees bee what tyne so euer they bee felled, and that no custome will serue in that case agaynste the statute, no moze than it shoulde doe of great trees. **D.** And what holde they of the barke of the trees. **S.** Therin I haue not heard their opinions, but it semeth to be one law with y loppes.

**D.** I perceyue well by that thou haste saide before that thy mynde is y yf a whole countrey prescribe to be quite of tythes, of trees Corne, and grasse, or of anye other tithes, y that prescription is good, so y the spirituall ministers haue sufficient besyde to liue vpo, dost thou not meane so. **S.** Yes verely.

**D.** And than I would know thy mynd if any manne contrarpe to y prescription were sued in y spirituall courte for Corne and Grasse or anye other tythes whether a prohibition shoulde lye in y case as it vpd after thy minde before y sayde statute wherc a manne was sued in y spirituall court for tithe woode.

**S.** I thinke nay. **D.** And why not there as well as it did where a man was sued for the tith woode. **S.** For as I take it: there is great diuersitie betwene y cases and y for thys

cause, there is a maxime in y lawe of Englande y if any

Any sute be taken in þe spirituall court whereby  
 any goodes or lādes might be recovered, whiche  
 after the groundes of the lawe of the Realme  
 ought not to bee sued there though the parcase the  
 kinges courte shall holde no plee thereof, þe yet a  
 prohibicion shoulde lye and after whan it hadde  
 continued longe þe no tythes were paid of wood  
 because of the sayde prohibicion and that after  
 by processe of time some curates beganne to aske  
 tythes of Woode contrarpe to þe lawe and con-  
 trarpe to the sayde prescryption so þe varyaunce  
 beganne to ryle betwene curates and their pari-  
 shens in þe behalfe, than for appeasing of the said  
 variaunce, the sayde statute was made, and þe as  
 it semeth more at the callunge on of the spiritual-  
 tye than of the temporaltie, for the statute doth  
 not expressely graunte þe the prohibicion in that  
 case of tythe woode shoulde lye so largely as som  
 saye it laye by the lawe: howbeit, it dothe not re-  
 strayne the common lawe therein as it appeareth  
 evidently by the wordes of the statute, and so af-  
 ter some menne it appeared before the statute, &  
 also after the statute as I haue touched before,  
 þe the spirituall courte oughte not in that case to  
 haue made any processe for tithe woode: & there-  
 fore if they did a prohibicion lay by the commō  
 lawe: and like lawe is if the spiritual court make  
 processe vpon such a legacy as by the law of the  
 realme is voyde. As if a man bequeth to one a-  
 nother mannes horse, and the spirituall courte  
 thereuppon maketh processe to execute þe lega-  
 cy: there a prohibicion lieth for it appeareth euy-  
 dently in the libel if all the trouthe appeare in the  
 lybell

## the. iij. Chapter.

lybell that in the lawe of the Realme & legacye is voyde to all ententes . And & he to whome & legacye is made shall neyther haue the horse nor the value of the horse And in lykerwyse if a man sell his lande for. C. li. and he is sued after in the spirituall courte for & tithe of the sayde. C. li. There a prohibicion shall lye, for it appereth in & case openly in the libell that no tith oughte to bee payde, and & the spiritual lawe ought not in that case to make anye processe whereby the goodes of hym that solde the lande myght be taken fro hym agaynste & lawe of the Realme, and vppon this grounde it is & yf a manne were sued in & spirituall courte nowe sythe & statute for a mortuary & a prohibicion shoulde lye, for it appereth in the lybell: that sythe & statute there ought no suite to bee taken for mortuaries, and & same lawe is if any suite were taken in & spirituall court for a newe ductye & is of late taken in some places vppon leases of parsonages and bycarages whiche is called a dimission noble, for it appereth euidentlye in & libell if any be made therevppon & no suche processe oughte by & lawe of & realme to bee made in that behalfe, but in & case of tythe corne, or grasse, or suche other thynges, wherein thou hast despyred to kuowe my mynde, therc appereth nothyng in & libell but & the suite thercof of ryghte appertayneth to the spirituall lawe and so for anye thyng & appereth & partye maye bee holpen in & spirituall courte by & prescripcion, and if & case were so farre put & in & spirituall court they woulde not allowe & sayde prescripcion, yet I thinke no prohibicion

hibicion shoulde lye, for though & spirituall iudges in a spirituall matter denye the parties of iustyce, yet & kynges lawes canne not resourme & but muste remyt it to theyr conscience. But if there were some remedye prouyded in & case it were well done, for some saye & in the spirituall courte they wyl admyt no plee agaynst tithes. And also if a composition were made by assente of & patrone and also of & ordinarie betwene a parson and one of his parishens & the p sone and his successours shoulde haue for a certaine grounde so many quarters of cozne for his tithe yearly, and after contrarie to & composition & parson in the spirituall courte asketh the tithes as they fall, & in this case no prohibicion shoulde lye, ne yet though the case were further put & the composition were pleaded in the court and were disallowed, but al resketh in & conscience of the Judges spirituall as is sayde before howe be it because some be of oppinion & a prohibicion shoulde lye in this laste case, therfore I wil referre it to & iudgement of other, but in the case of the prescripcion before reherfed I take it for the clerer case, & no prohibicion shall lye as I haue said before. And I beseech our lord that this matter and suche other like therto may be so charitably looked vppon that there bee not hereafter suche diuisions ne suche diuersities of opinions therein as hath been in tyme paste wherby hath folowed greate costes and charges to manye parsons in this Realme and that hath moued me to speake so farre in this Chapiter, and in dyuers other Chapiters of this presente boke



## the. l v. Chapter.

booke as I haue done, not intending thereby to  
geue occasion to any parson to Wholde his tithes  
that of right ought to be payde, ne to alter y<sup>e</sup> por-  
cion therein befoze accustomed but y<sup>e</sup> as me thin-  
keth they ought to bee claimed by thesame tytle  
as they ought to be payde, and by none other, &  
that it may also somewhat appeare that the said  
statute of. xlv. of Edward the third is well &  
lawfully made and vpon a good reasonable cō-  
sideracion, and that the said prescription is good  
also, so that no man was in any daunger of exco-  
municacion for the making of the saide statute,  
nor yet is not for the obseruing therof, ne yet of  
the sayde prescription as it is noted by some par-  
sons that there should be. And thus I commyt  
the vnto oure lord who euer haue bothe the and  
me in his blessed keeping euerlastyngly. Amen.

Finis.

Here endeth the seconde Dyalogue in Eng-  
lyshe, wyth newe Addicions betwixte a  
Doctour and a Studēt in the  
lawes of England. And  
hereafter foloweth  
the Table.

(.)



**T**here after foloweth the table  
to the firſte Booke with certain additi-  
ons newly added thereto and ouer al þ  
chapters and questions which be  
newly added: ye ſhal find en-  
titled this word Additiō,  
both in the table and  
alſo in the  
Booke.

<b>T</b> he introduccion.	
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¶ F I N I S.

¶ Londini in aedibus Ri=  
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An. 1554.



